



City Council Chambers  
3300 Capitol Avenue  
Fremont, California

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### City Council

Bob Wasserman, Mayor  
Bob Wieckowski, Vice Mayor  
Anu Natarajan  
Bill Harrison  
Suzanne Lee Chan

### City Staff

Fred Diaz, City Manager  
Harvey E. Levine, City Attorney  
Melissa Stevenson Dile, Deputy City Manager  
  
Dawn G. Abrahamson, City Clerk  
Harriet Commons, Finance Director  
Marilyn Crane, Information Technology Svcs. Dir.  
Mary Kaye Fisher, Interim Human Resources Dir.  
Annabell Holland, Parks & Recreation Dir.  
Norm Hughes, City Engineer  
Jill Keimach, Community Dev. Director  
Bruce Martin, Fire Chief  
Jim Pierson, Transportation & Ops Director  
Jeff Schwob, Planning Director  
Suzanne Shenfil, Human Services Director  
Craig Steckler, Chief of Police  
Lori Taylor, Acting Economic Dev. Director  
Elisa Tierney, Redevelopment Director

## City Council Agenda and Report [Redevelopment Agency of Fremont]

### General Order of Business

1. Preliminary
  - Call to Order
  - Salute to the Flag
  - Roll Call
2. Consent Calendar
3. Ceremonial Items
4. Public Communications
5. Scheduled Items
  - Public Hearings
  - Appeals
  - Reports from Commissions, Boards and Committees
6. Report from City Attorney
7. Other Business
8. Council Communications
9. Adjournment

### Order of Discussion

Generally, the order of discussion after introduction of an item by the Mayor will include comments and information by staff followed by City Council questions and inquiries. The applicant, or their authorized representative, or interested citizens, may then speak on the item; each speaker may only speak once to each item. At the close of public discussion, the item will be considered by the City Council and action taken. Items on the agenda may be moved from the order listed.

### Consent Calendar

Items on the Consent Calendar are considered to be routine by the City Council and will be enacted by one motion and one vote. There will be no separate discussion of these items unless a Councilmember or citizen so requests, in which case the item will be removed from the Consent Calendar and considered separately. Additionally, other items without a "Request to Address the City Council" card in opposition may be added to the consent calendar. The City Attorney will read the title of ordinances to be adopted.



## **Addressing the Council**

Any person may speak once on any item under discussion by the City Council after receiving recognition by the Mayor. Speaker cards will be available prior to and during the meeting. To address City Council, a card must be submitted to the City Clerk indicating name, address and the number of the item upon which a person wishes to speak. When addressing the City Council, please walk to the lectern located in front of the City Council. State your name. In order to ensure all persons have the opportunity to speak, a time limit will be set by the Mayor for each speaker (see instructions on speaker card). In the interest of time, each speaker may only speak once on each individual agenda item; please limit your comments to new material; do not repeat what a prior speaker has said.

## **Oral Communications**

Any person desiring to speak on a matter which is not scheduled on this agenda may do so under the Oral Communications section of Public Communications. Please submit your speaker card to the City Clerk prior to the commencement of Oral Communications. **Only those who have submitted cards prior to the beginning of Oral Communications will be permitted to speak.** Please be aware the California Government Code prohibits the City Council from taking any immediate action on an item which does not appear on the agenda, unless the item meets stringent statutory requirements. The Mayor will limit the length of your presentation (see instructions on speaker card) and each speaker may only speak once on each agenda item.

**To leave a voice message for all Councilmembers and the Mayor simultaneously, dial 284-4080.**

**The City Council Agendas may be accessed by computer at the following Worldwide Web Address: [www.fremont.gov](http://www.fremont.gov)**

## **Information**

Copies of the Agenda and Report are available in the lobbies of the Fremont City Hall, 3300 Capitol Avenue and the Development Services Center, 39550 Liberty Street, on Friday preceding a regularly scheduled City Council meeting. Supplemental documents relating to specific agenda items are available at the Office of the City Clerk.

The regular meetings of the Fremont City Council are broadcast on Cable Television Channel 27 and can be seen via webcast on our website ([www.Fremont.gov](http://www.Fremont.gov)).

Assistance will be provided to those requiring accommodations for disabilities in compliance with the Americans with Disabilities Act of 1990. Interested persons must request the accommodation at least 2 working days in advance of the meeting by contacting the City Clerk at (510) 284-4060. Council meetings are *open captioned* for the deaf in the Council Chambers and *closed captioned* for home viewing.

## **Availability of Public Records**

All disclosable public records relating to an open session item on this agenda that are distributed by the City to all or a majority of the City Council less than 72 hours prior to the meeting will be available for public inspection in specifically labeled binders located in the lobby of Fremont City Hall, 3300 Capitol Avenue during normal business hours, at the time the records are distributed to the City Council.

Information about the City or items scheduled on the Agenda and Report may be referred to:

Address: City Clerk  
City of Fremont  
3300 Capitol Avenue, Bldg. A  
Fremont, California 94538  
Telephone: (510) 284-4060

*Your interest in the conduct of your City's business is appreciated.*

**AGENDA**  
**FREMONT CITY COUNCIL REGULAR MEETING**  
**JANUARY 12, 2010**  
**COUNCIL CHAMBERS, 3300 CAPITOL AVE., BUILDING A**  
**7:00 P.M.**

**1. PRELIMINARY**

- 1.1 Call to Order
- 1.2 Salute the Flag
- 1.3 Roll Call
- 1.4 Announcements by Mayor / City Manager

**2. CONSENT CALENDAR**

*Items on the Consent Calendar are considered to be routine by the City Council and will be enacted by one motion and one vote. There will be no separate discussion of these items unless a Councilmember or citizen so requests, in which event the item will be removed from the Consent Calendar and considered separately. Additionally, other items without a "Request to Address Council" card in opposition may be added to the consent calendar. The City Attorney will read the title of ordinances to be adopted.*

- 2.1 *Motion to Waive Further Reading of Proposed Ordinances  
(This permits reading the title only in lieu of reciting the entire text.)*

- 2.2 *Approval of Minutes – for the Work Session and Regular Meeting of  
December 15, 2009*

- 2.3 **RAILROAD AVENUE STREET VACATION (PLN2009-00033)**  
*Initiation of a Proceeding to Consider a General Vacation to Abandon Railroad  
Avenue in the Irvington Planning Area*

*Contact Person:*

<i>Name:</i>	<i>Jennifer Brame</i>	<i>Jeff Schwob</i>
<i>Title:</i>	<i>Associate Planner</i>	<i>Planning Director</i>
<i>Dept.:</i>	<i>Community Development</i>	<i>Community Development</i>
<i>Phone:</i>	<i>510-494-4554</i>	<i>510-494-4527</i>
<i>E-Mail:</i>	<i>jbrame@fremont.gov</i>	<i>jschwob@fremont.gov</i>

**RECOMMENDATION:** *Adopt motion initiating a general vacation proceeding pertaining to the subject property and direct the Clerk to set and publicly notice a public hearing to be held on February 23, 2010.*

2.4 **REPORT OF ACTIONS TAKEN DURING COUNCIL RECESS**

*Report of Actions Taken by the City Manager during Council Recess, December 16, 2009 through January 11, 2010*

*Contact Person:*

<i>Name:</i>	<i>Dawn Abrahamson</i>	<i>Melissa Stevenson Dile</i>
<i>Title:</i>	<i>City Clerk</i>	<i>Deputy City Manager</i>
<i>Dept.:</i>	<i>City Clerk's Office</i>	<i>City Manager's Office</i>
<i>Phone:</i>	<i>510-284-4063</i>	<i>510-284-4005</i>
<i>E-Mail:</i>	<i>dabrahamson@ci.fremont.ca.us</i>	<i>mdile@ci.fremont.ca.us</i>

*RECOMMENDATION: Receive report acknowledging actions taken by the City Manager or designee during the recess.*

2.5 **ACCEPTANCE OF REDEVELOPMENT AGENCY ANNUAL REPORT OF FINANCIAL TRANSACTIONS AND HOUSING ACTIVITIES REPORT**

*Acceptance of the Fremont Redevelopment Agency's Annual Report of Financial Transactions and Housing Activities Report*

*Contact Person:*

<i>Name:</i>	<i>Kelly Sessions</i>	<i>Elisa Tierney</i>
<i>Title:</i>	<i>Business Manager</i>	<i>Redevelopment Agency Director</i>
<i>Dept.:</i>	<i>Office of Housing &amp; Redevelopment</i>	<i>Office of Housing &amp; Redevelopment</i>
<i>Phone:</i>	<i>510-494-4281</i>	<i>510-494-4501</i>
<i>E-Mail:</i>	<i>ksessions@fremont.gov</i>	<i>etierney@fremont.gov</i>

*RECOMMENDATION: Accept the Redevelopment Agency Annual Report as submitted to the State Controller.*

2.6 **Office Depot Contract Extension**

*Approve and Authorize the Extension of the Office Depot Contract, Through the U.S. Communities Government Purchasing Alliance, Through January 2, 2011*

*Contact Person:*

<i>Name:</i>	<i>Corina Campbell</i>	<i>Catherine Chevalier</i>
<i>Title:</i>	<i>Purchasing Manager</i>	<i>Budget Manager</i>
<i>Dept.:</i>	<i>Finance</i>	<i>Finance</i>
<i>Phone:</i>	<i>510-494-4622</i>	<i>510-494-4615</i>
<i>E-Mail:</i>	<i>ccampbell@fremont.gov</i>	<i>cchevalier@fremont.gov</i>

*RECOMMENDATION: Authorize the City Manager or his designee to approve the extension of the Office Depot contract through the U.S. Communities Government Purchasing Alliance and issue a purchase order not to exceed \$350,000 for calendar year 2010.*

2.7 *ALLOCATION OF HOME FUNDS FOR ALLIED HOUSING-MAIN STREET VILLAGE*

*Adopt a Resolution Appropriating \$1,059,991 in Federal HOME Program Funds for the Construction of Allied Housing-Main Street Village Project Planned for 3615/3657 Main Street and 41037/41045 High Street in the Irvington Redevelopment Area*

*Contact Person:*

<i>Name:</i>	<i>Bill Cooper</i>	<i>Elisa Tierney</i>
<i>Title:</i>	<i>Housing Project Manager</i>	<i>Redevelopment Agency Director</i>
<i>Dept.:</i>	<i>Office of Housing &amp; Redevelopment</i>	<i>Office of Housing &amp; Redevelopment</i>
<i>Phone:</i>	<i>510-494-4520</i>	<i>510-494-4501</i>
<i>E-Mail:</i>	<i>bcooper@fremont.gov</i>	<i>etierney@fremont.gov</i>

*RECOMMENDATION: Adopt a resolution to:*

- 1. Appropriate \$1,059,991 in HOME funds to Allied Housing's Main Street Village project (911HHD6113), located in the Irvington Project Area; and*
- 2. Approve the substitution of \$1,059,991 in previously approved Agency Affordable Housing funds with an equal amount of HOME funds in the form of a loan, subject to the conditions set forth in the loan terms previously approved by the Agency Board; and*
- 3. Authorize the City Manager or his designee to take such other actions and execute loan documents prepared and approved by the Agency's Special Counsel and City Attorney.*

2.8 *TRANSMITTAL OF FY 2008/09 AUDIT REPORTS*

*Transmittal of FY 2008/09 Audit Reports*

*Contact Person:*

<i>Name:</i>	<i>Gloria del Rosario</i>	<i>Harriet Commons</i>
<i>Title:</i>	<i>Senior Accountant</i>	<i>Director</i>
<i>Dept.:</i>	<i>Finance</i>	<i>Finance</i>
<i>Phone:</i>	<i>510-494-4602</i>	<i>510-284-4010</i>
<i>E-Mail:</i>	<i>gdelrosario@fremont.gov</i>	<i>hcommons@fremont.gov</i>

*RECOMMENDATION: Receive audit reports and file.*

2.9 *KING & LYONS DEVELOPMENT AGREEMENT AMENDMENT – FOR PROPERTY GENERALLY LOCATED AT S. TERMINUS OF FREMONT BOULEVARD, NORTH OF DIXON RD. (PLN2009-00187)*

*Public Hearing (Published Notice) to Consider the Planning Commission's Recommendation of an Ordinance to Amend Development Agreement DA-92-1 To Allow a Time Extension and Update of Terms For Property Located at the Southern Terminus of Fremont Boulevard, North of Dixon Landing Road Interchange, and West of Interstate 880 in the Industrial Planning Area*

*Contact Person:*

<i>Name:</i>	<i>Clifford Nguyen</i>	<i>Jeff Schwob</i>
<i>Title:</i>	<i>Associate Planner</i>	<i>Planning Director</i>
<i>Dept.:</i>	<i>Community Development</i>	<i>Community Development</i>
<i>Phone:</i>	<i>510-494-4769</i>	<i>510-494-4527</i>
<i>E-Mail:</i>	<i>cnguyen@fremont.gov</i>	<i>jschwob@fremont.gov</i>

*RECOMMENDATIONS:*

- 1. Hold public hearing.*
- 2. Find the proposed project (Third Amendment to DA—PLN2009-00187) is in conformance with relevant provisions contained in the City's General Plan. These provisions include the designations, goals and policies set forth in the General Plan's Land Use Chapter under Restricted Industrial District, Commercial/Industrial Overlay.*
- 3. Find the proposed project (Third Amendment to DA—PLN2009-00187) is in compliance with the applicable requirements as set forth in the Fremont Municipal Code.*
- 4. Find that the proposed project is consistent with the scope and analysis of certified EIR (SCH#2008042116) and that no additional environmental review is required per CEQA Guideline 15162 as there have been no changes to the project involving new significant or substantially increased environmental effects, changes to circumstances, or new information concerning significant effects, mitigations, or alternatives.*
- 5. Waive full reading and introduce an Ordinance amending Development Agreement DA-92-1 by a) extending the term of the Agreement for ten years to March 31, 2020; and, b), providing a Traffic Impact Fee credit and Interchange Improvement Reimbursement as specified in the Third Amendment.*
- 6. Direct staff to prepare and the Clerk to publish a summary of the above Ordinance.*

*2.10 RAISCH PRODUCTS TIME EXTENSION – 7010 AUTO MALL PARKWAY  
Public Hearing (Published Notice) to Consider a Planning Commission  
Recommendation of a Planned District Major Amendment (Introduction of an  
Ordinance) and Zoning Administrator Permit Amendment to Allow a Time Extension  
for the Required Cessation Date of a Previously Approved Interim Concrete  
Recycling Facility from January 1, 2012 to December 31, 2015 (PLN2010-00062)*

*Contact Person:*

<i>Name:</i>	<i>Steve Kowalski</i>	<i>Jeff Schwob</i>
<i>Title:</i>	<i>Associate Planner</i>	<i>Planning Director</i>
<i>Dept.:</i>	<i>Community Development</i>	<i>Community Development</i>
<i>Phone:</i>	<i>510-494-4532</i>	<i>510-494-4527</i>
<i>E-Mail:</i>	<i>skowalski@fremont.gov</i>	<i>jschwob@fremont.gov</i>

**RECOMMENDATION:**

1. *Hold public hearing;*
2. *Find that the project is consistent in nature and scope with the original Planned District approval previously analyzed in Environmental Impact Report SCH#2001122003 and that therefore no further environmental review is necessary;*
3. *Waive full reading and introduce an ordinance amending Planned District P-2005-262(F) to allow concrete and asphalt recycling activities to continue at the subject property until December 31, 2015 in accordance with Exhibit "A" based on the findings contained in Exhibit "B"; and*
4. *Approve the proposed the Amendment to Zoning Administrator Permit PLN2007-00328 as per Exhibit "C".*

**2.11 AMENDMENT TO ADULT USE ZONING REGULATIONS (PLN2010-00105)**

*To Consider a Public Hearing (Published Notice) to Waive Full Reading and Introduce an Ordinance to Consider Planning Commission Recommendation to Amend Fremont Municipal Code Title 8, Chapter 2 to Prohibit the Use "Adult Encounter Center" Citywide and Make Minor Changes to the Locational Criteria*

**Contact Person:**

<b>Name:</b>	<i>Jennifer Brame</i>	<i>Jeff Schwob</i>
<b>Title:</b>	<i>Associate Planner</i>	<i>Planning Director</i>
<b>Dept.:</b>	<i>Community Development</i>	<i>Community Development</i>
<b>Phone:</b>	<i>510-494-4554</i>	<i>510-494-4527</i>
<b>E-Mail:</b>	<i>jbrame@fremont.gov</i>	<i>jschwob@fremont.gov</i>

**RECOMMENDATION:**

1. *Hold public hearing.*
2. *Find that the proposed Zoning Text Amendment is exempt from the California Environmental Quality Act per Guideline 15061(b)(3), the general rule, which applies when the activity has no potential for causing a significant effect on the environment.*
3. *Find that the Zoning Text Amendment is in conformance with the relevant provisions contained in the City's General Plan. These provisions include the goals and objectives set forth in the General Plan's Fundamental Goals and Local Economy Chapter as enumerated within the staff report.*
4. *Find the public necessity, convenience, and general welfare require the adoption of this Zoning Text Amendment because the use adult encounter center is not appropriate anywhere in the City, including the Central Business District, the cultural/civic center of the community, where all age groups, including families with children, congregate.*
5. *Waive full reading and introduce an ordinance adopting the proposed Zoning Text Amendment.*

### **3. CEREMONIAL ITEMS**

- 3.1 Proclamation: National Blood Donor Month
- 3.2 Resolution: Congratulating Phil Holmes for his recognition by the Washington Township Historical Society, Mission Peak Heritage Foundation, and the Museum of Local History as the “Official” Historian of Fremont, California
- 3.3 Resolution: Recognizing Andrew MacRae for His Dedication & Service for the Webcam Presence at Lake Elizabeth
- 3.4 Resolution: Honoring the Fremont Police Department SWAT Team

### **4. PUBLIC COMMUNICATIONS**

- 4.1 Oral and Written Communications

REDEVELOPMENT AGENCY – The Redevelopment Agency Board will convene at this time and take action on the agenda items listed on the Redevelopment Agency Agenda. See separate agenda (yellow paper).

PUBLIC FINANCING AUTHORITY – None.

CONSIDERATION OF ITEMS REMOVED FROM CONSENT CALENDAR

### **5. SCHEDULED ITEMS**

- 5.1 PARTICIPATION IN THE CALIFORNIAFIRST PROGRAM OFFERED BY THE CALIFORNIA STATEWIDE COMMUNITIES DEVELOPMENT AUTHORITY Hold Public Hearing (Published Notice) and Adopt Resolution Authorizing City of Fremont Participation in the CaliforniaFIRST Program for Financing of Renewable Energy, Energy Efficiency, and Water Efficiency Projects



Contact Person:

Name:	Dan Schoenholz	Don Dorman
Title:	Policy and Special Projects Manager	Revenue & Treasury Manager
Dept.:	Community Development	Finance
Phone:	510-494-4438	510-494-4616
E-Mail:	dschoenholz@fremont.gov	ddorman@fremont.gov

RECOMMENDATION:

1. Hold a public hearing.
2. Adopt a resolution authorizing the City of Fremont's participation in the CaliforniaFIRST program offered by the California Statewide Communities Development Authority (CSCDA).

5.2 AUTHORIZATION OF TWO GRANT APPLICATIONS FOR STATE ENERGY PROGRAM FUNDING

Adopt Resolution Authorizing Sacramento County to Act as Lead Applicant for a Municipal Financing Program Grant (SEP 1) and Resolution Authorizing the Association of Bay Area Governments to Act as Lead Applicant for a California Comprehensive Residential Building Retrofit Grant (SEP 2)

Contact Person:

Name:	Dan Schoenholz	Jill Keimach
Title:	Policy and Special Projects Manager	Director
Dept.:	Community Development	Community Development
Phone:	510-494-4438	510-494-4627
E-Mail:	dschoenholz@fremont.gov	jkeimach@fremont.gov

RECOMMENDATION:

1. Adopt Resolution Authorizing Sacramento County to Act as Lead Applicant for a Municipal Financing Program Grant on Behalf of the City of Fremont.
2. Adopt Resolution Authorizing the Association of Bay Area Governments to Act as Lead Applicant for a California Comprehensive Residential Building Retrofit Grant on Behalf of the City of Fremont.

5.3 APPEAL OF DENIAL OF WANG FAMILY TENTATIVE PARCEL MAP (TPM #8265) – 46953 OCOTILLO COURT

Public Hearing (Published Notice) to Consider an Appeal of a Planning Commission Decision to Deny a Tentative Parcel Map Application (TPM 8265) to Subdivide a 1.02-acre Parcel into Two Single-Family Lots (PLN2009-00175)

Contact Person:

Name:	Steve Kowalski	Jeff Schwob
Title:	Associate Planner	Planning Director
Dept.:	Community Development	Community Development
Phone:	510-494-4532	510-494-4527
E-Mail:	skowalski@fremont.gov	jschwob@fremont.gov

RECOMMENDATION:

1. Hold public hearing;
2. Find that the project is categorically exempt from the California Environmental Quality Act (CEQA) pursuant to Guideline 15315 which exempts minor land divisions of four (4) or fewer parcels;

And either:

- 3a. Find that Tentative Parcel Map 8265 is in conformance with the relevant provisions contained in the City's current General Plan. These provisions include the designations, goals, objectives and policies set forth in the General Plan's Land Use Chapter and Housing Element as enumerated within the staff report; and
  - 3b. Reverse the Planning Commission's decision and approve Tentative Parcel Map 8265 as shown in Exhibit "A" based on the findings and subject to the conditions contained in Exhibit "B";
- Or
4. Direct staff to prepare findings for denial of the project and continue the hearing to a date certain.

**6. REPORT FROM CITY ATTORNEY**

- 6.1 Report Out from Closed Session of Any Final Action

**7. OTHER BUSINESS**

**7.1 PURCHASE OF FLEET REPLACEMENT VEHICLES AND DELEGATION OF AUTHORITY TO THE CITY MANAGER TO APPROVE FLEET PURCHASES OVER \$100,000**

Authorization for the City Manager or Designee to Purchase Fleet Replacement Vehicles from Frontier Ford in an Amount Not to Exceed \$353,811 and from Maita Chevrolet in an Amount Not to Exceed \$177,813 and Delegation of Authority to the City Manager or Designee to Execute Fleet Purchases from the Multi-Year Vehicle Bids

Contact Person:

Name:	Mark P. Collins	Frank Morgan
Title:	Fleet Maintenance Supervisor	Deputy Director of Maintenance Services
Dept.:	Transportation & Operations	Transportation & Operations
Phone:	510-979-5739	510-979-5701
E-Mail:	mcollins@fremont.gov	fmorgan@fremont.gov

RECOMMENDATION:

1. Authorize the City Manager or designee to execute a purchase order with Frontier Ford in an amount not to exceed \$353,811 for the purchase of 13 Crown Victoria police patrol replacement vehicles.
2. Authorize the City Manager or designee to execute a purchase order with Maita Chevrolet in an amount not to exceed \$177,813 for the purchase of five Chevrolet Tahoe fire command replacement vehicles.

3. Delegate authority to the City Manager or designee to execute purchase orders for replacement vehicle and equipment that are over \$100,000 during the 2009/10 fiscal year, so long as the purchases are from the Council-approved Multi-Year Vehicle Bids using the approved vendors and low-bid prices, and are within the FY 2009/10 vehicle replacement appropriation.

## 7.2 GRIMMER BOULEVARD GREENBELT GATEWAY PHASE 1 CONTRACT AWARD

Approval of Plans and Specifications and Award of Contract in the Amount of \$992,699.68 to the Lowest Responsible Bidder for the Grimmer Greenbelt Gateway Phase 1 (Paseo Padre Parkway Intersection Improvements) Project, City Project No. 8679A (PWC)

### Contact Person:

Name:	Paul Leung	Norm Hughes
Title:	Associate Civil Engineer	City Engineer
Dept.:	Community Development	Community Development
Phone:	510-494-4512	510-494-4748
E-Mail:	pleung@fremont.gov	nhughes@fremont.gov

### RECOMMENDATION:

1. Approve the Plans and Specifications for the Grimmer Boulevard Greenbelt Gateway Phase 1 (Paseo Padre Parkway Intersection Improvements) project, City Project No. 8679A (PWC).
2. Waive minor irregularity, accept the bid and award the construction contract for Grimmer Boulevard Greenbelt Gateway Phase 1 (Paseo Padre Parkway Intersection Improvements) project, City Project No. 8679A (PWC) to the lowest responsible bidder, C. F. Archibald Paving, Inc., in the amount of \$992,699.68 and authorize the City Manager or his designee to execute the contract.
3. Authorize the appropriation of \$850,000 from Washington Boulevard. /Paseo Padre Parkway Grade Separations, 531 PWC 8156, to Grimmer Boulevard Greenbelt Gateway 531 PWC 8679.

## 8. COUNCIL COMMUNICATIONS

- 8.1 Council Referrals – None.
- 8.2 Oral Reports on Meetings and Events

## 9. ADJOURNMENT



REPORT SECTION  
FREMONT CITY COUNCIL  
REGULAR MEETING

JANUARY 12, 2010

**\*2.3 RAILROAD AVENUE STREET VACATION (PLN2009-00033)**

**Initiation of a Proceeding to Consider a General Vacation to Abandon Railroad Avenue in the Irvington Planning Area**

**Contact Person:**

Name:	Jennifer Brame	Jeff Schwob
Title:	Associate Planner	Planning Director
Dept.:	Community Development	Community Development
Phone:	510-494-4554	510-494-4527
E-Mail:	jbrame@fremont.gov	jschwob@fremont.gov

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**Executive Summary:** Staff recommends that City Council adopt a motion initiating general vacation proceedings to abandon Railroad Avenue and direct the Clerk to set and provide notice of a public hearing to be held on February 23, 2010, following the provision of the public notice required by law.

**BACKGROUND:** The proposed general vacation would abandon Railroad Avenue, the majority of which would then be conveyed to Union Pacific Railroad (UPRR) as part of the Grade Separation projects. The remaining portion will be conveyed to BART. Railroad Avenue is located directly north of the new Washington Boulevard overcrossing (see enclosed map) and has not been accessible as a public street since September 2007. In September 2008, as part of the Grade Separation projects, the UPRR tracts were relocated approximately 300 feet to the east (at this location) and constructed over Railroad Avenue. Since that time, UPRR has utilized this portion of Railroad Avenue for its active, heavy rail operations. The City of Fremont owns Railroad Avenue in fee. There are existing utilities and encumbrances on the property and appropriate interests will be reserved for them as part of the vacation proceedings.

Railroad Avenue is depicted on the enclosure.

**DISCUSSION/ANALYSIS:**

**Initiation of General Vacation Proceedings:** The merits of the proposed general vacation are not presently before the City Council. The Council will consider the merits and decide whether to order a vacation at a public hearing held on February 23, 2010. The motion should also direct the Clerk to set the matter for hearing and to provide for required public notice.

**FISCAL IMPACT:** N/A

**ENVIRONMENTAL REVIEW:** N/A

**ENCLOSURE:** [Location Map of Railroad Avenue and Adjacent Area](#)

**RECOMMENDATION:** Adopt motion initiating a general vacation proceeding pertaining to the subject property and direct the Clerk to set and publicly notice a public hearing to be held on February 23, 2010.

## **\*2.4 REPORT OF ACTIONS TAKEN DURING COUNCIL RECESS**

### **Report of Actions Taken by the City Manager during Council Recess, December 16, 2009 through January 11, 2010**

#### **Contact Person:**

Name:	Dawn Abrahamson	Melissa Stevenson Dile
Title:	City Clerk	Deputy City Manager
Dept.:	City Clerk's Office	City Manager's Office
Phone:	510-284-4063	510-284-4005
E-Mail:	dabrahamson@ci.fremont.ca.us	mdile@ci.fremont.ca.us

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**Executive Summary:** The purpose of this report is to notify City Council of the administrative actions taken by the City Manager or his designee during the Council recess of December 16, 2009 through January 11, 2010.

**BACKGROUND:** On December 15, 2009, the City Council adopted Resolution No. 2009-80, authorizing the City Manager or designee to approve administrative matters specified in the resolution during the legislative recess period. All of the contract awards were at or below the budgeted amounts and engineers' estimated amounts, which are shown below. Following is the status of items specified in Resolution No. 2009-80:

1. Title: City Manager Change Order Authority for Niles Town Plaza Project

Staff Contact: Rob Kalkbrenner, Civic Facilities Division Manager, 484-4428

Name of Contracting Party: River View Construction

Budgeted Amount: This change order was required due to additional project costs related to the testing and removal of dirt and debris that was illegally dumped on the site, the removal of additional soil after the fine grading, and ensuring the delivery of items that were delayed due to manufacturing slow downs. Total project budget is \$7,250,000.

Action: The City Manager approved the project's final change order bringing the total cumulative change order percentage to 21.41% for the Niles Town Plaza Project. There was no effect on the overall project budget.
2. Title: Additional CDBG-R Funding for Family Resource Center Soffit and Fascia Replacement

Staff Contact: Lucia Hughes, Management Analyst II, 574-2043

Name of Contracting Party: Cal-Bay Construction, Inc.

Budgeted Amount: \$41,000

Action: The City Manager: (1) approved additional funding for the Family Resource Center Soffit and Fascia Replacement project in the amount of \$41,000; (2) appropriated unallocated ARRA CDBG-R funding of \$41,000 to 194 PWC 8705; and (3) directed staff to

return any unused funds to Fund 194 PWC 8716 account at the closeout of the project.

3. Title: Joint Powers Agreement with Newark Unified School District for Mental Health Services  
Staff Contact: Iris Preece, Youth and Family Services Administrator, 574-2128  
Name of Contracting Party: Newark Unified School District  
Budgeted Amount: \$5,094  
Action Taken: No action was taken during the Council recess.

**ENCLOSURE:** None.

**RECOMMENDATION:** Receive report acknowledging actions taken by the City Manager or designee during the recess.

**\*2.5 ACCEPTANCE OF REDEVELOPMENT AGENCY ANNUAL REPORT OF FINANCIAL TRANSACTIONS AND HOUSING ACTIVITIES REPORT**  
**Acceptance of the Fremont Redevelopment Agency's Annual Report of Financial Transactions and Housing Activities Report**

**Contact Person:**

Name:	Kelly Sessions	Elisa Tierney
Title:	Business Manager	Redevelopment Agency Director
Dept.:	Office of Housing & Redevelopment	Office of Housing & Redevelopment
Phone:	510-494-4281	510-494-4501
E-Mail:	ksessions@fremont.gov	etierney@fremont.gov

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**Note:** A companion item appears on the January 12, 2010 Redevelopment Agency agenda.

**Executive Summary:** State law requires every Redevelopment Agency to submit an annual report to the City Council. This agenda item provides information on the annual report and recommends that the Council accept this report.

**BACKGROUND:** State law and regulations require the Fremont Redevelopment Agency to submit an annual report to the State Controller's Office by December 31 of each year and to submit the report to the Agency's Legislative Body. Copies of the report were distributed to Council and the report was sent to the State on December 28, 2009.

**DISCUSSION/ANALYSIS:** State law mandates that the Fremont Redevelopment Agency submit an annual report within six months of the close of the fiscal year to the Agency's Legislative Body, as well as to the State Controller's Office. As required, this Annual Report consists of the following:

- U.S. Bureau of the Census Survey Form
- Annual Report of Financial Transactions of Community Redevelopment Agencies
- Redevelopment Agency's Financial and Compliance Audit
- Annual Report of Housing Activity of Community Redevelopment Agencies
- Blight Progress Report
- Loan Report
- Property Report

The Legislative Body is required to review the report and take any action it deems appropriate by no later than its first meeting that occurs more than 21 days from when it received the report, which is the January 12, 2010 City Council and Redevelopment Agency meeting.

In addition to the above report, the Mitigation Monitoring Program report is submitted annually to the City Council and Redevelopment Agency Board. This report is required by the Resolution through which the Council and Agency certified the Environmental Impact Report for the 1998 Redevelopment Plan Amendments. No action is required on this report. Copies were distributed to the City Council and Redevelopment Agency Board on December 18, 2009. Copies of the reports discussed above are available for public review in the Office of Housing and Redevelopment.



**FISCAL IMPACT:** Although this document contains financial material, the report is for informational purposes only and has no fiscal impact.

**ENVIRONMENTAL REVIEW:** Although this document contains material relative to the environment, the report is for informational purposes only and requires no environmental review.

**ENCLOSURE:** None.

**RECOMMENDATION:** Accept the Redevelopment Agency Annual Report as submitted to the State Controller.

## **\*2.6 OFFICE DEPOT CONTRACT EXTENSION**

### **Approve and Authorize the Extension of the Office Depot Contract, Through the U.S. Communities Government Purchasing Alliance, Through January 2, 2011**

#### **Contact Person:**

Name:	Corina Campbell	Catherine Chevalier
Title:	Purchasing Manager	Budget Manager
Dept.:	Finance	Finance
Phone:	510-494-4622	510-494-4615
E-Mail:	ccampbell@fremont.gov	cchevalier@fremont.gov

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**Executive Summary:** The purpose of this report is to request that the City Council approve and authorize the City Manager to execute related agreements for Fremont's continued participation in the co-operative purchasing agreement with Office Depot through the U.S. Communities Government Purchasing Alliance (U.S. Communities).

**BACKGROUND:** U.S. Communities is a nationwide purchasing cooperative for local and state government agencies, school districts, higher education and nonprofit organizations. As a participant in the program, Fremont has access to competitively solicited contracts that provide volume pricing discounts. The City of Fremont has "piggybacked" on the current Office Depot contract through U.S. Communities for office supplies, which expires January 1, 2010. U.S. Communities has extended the contract for one year. This request is to likewise extend the City's participation in the contract to January 1, 2011.

**DISCUSSION/ANALYSIS:** The U.S. Communities' solicitation for the office supplies contract was sent out by the County of Los Angeles in 2005, and took effect January 2, 2006. There were four responses to the solicitation, from Office Depot, Office Max, Corporate Express, and Caddo. The contract was awarded based on a point system for technical and service capabilities and lowest overall price. Office Depot had the lowest price and highest points and was, therefore, awarded the contract.

The non-exclusive contract pricing is based on a discount of 45% for core items purchased. Core items include items most often used, such as copier paper, paper products, pens, pencils, folders, furniture, toner and janitorial products. There is also a discount for non-core items ranging from 10% to 70%, depending on the product and manufacturer. Non-core items are items purchased less frequently.

In fiscal year 2008/09, the City spent approximately \$300,000 with Office Depot under this agreement. Office Depot is a Fremont based business. It is anticipated that the City will spend approximately \$350,000 in fiscal year 2009/10 because the "back-up" contracts for office supplies will not be renewed, and Purchasing staff will more strongly encourage staff to use the Office Depot contract because of the significant discounts available through that contract.

**FISCAL IMPACT:** Having access to an agreement that has been competitively solicited by another public agency saves staff time, which can then be spent on other tasks. Using this contract to the maximum extent practicable also results in procurement savings to the City.

**ENVIRONMENTAL REVIEW:** N/A

**ENCLOSURE:** None

**RECOMMENDATION:** Authorize the City Manager or his designee to approve the extension of the Office Depot contract through the U.S. Communities Government Purchasing Alliance and issue a purchase order not to exceed \$350,000 for calendar year 2010.

**\*2.7 ALLOCATION OF HOME FUNDS FOR ALLIED HOUSING-MAIN STREET VILLAGE**

**Adopt a Resolution Appropriating \$1,059,991 in Federal HOME Program Funds for the Construction of Allied Housing-Main Street Village Project Planned for 3615/3657 Main Street and 41037/41045 High Street in the Irvington Redevelopment Area**

**Contact Person:**

Name:	Bill Cooper	Elisa Tierney
Title:	Housing Project Manager	Redevelopment Agency Director
Dept.:	Office of Housing & Redevelopment	Office of Housing & Redevelopment
Phone:	510-494-4520	510-494-4501
E-Mail:	bcooper@fremont.gov	etierney@fremont.gov

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**Note:** A companion item appears on the January 12, 2010 Redevelopment Agency agenda.

**Executive Summary:** On July 28, 2009, the Redevelopment Agency approved a loan not to exceed \$7,045,350 in Agency Housing, State HELP and federal CDBG funds for Allied Housing's 64-unit Main Street Village planned for High and Main Streets in Irvington. Staff now recommends substituting a portion of the Agency Housing funds with HOME Program funds. Specifically, staff recommends that the City Council appropriate \$1,059,991 in HOME funds for the project. If the HOME appropriation is approved, these funds would replace an equal amount of Agency Housing funds previously committed to Main Street Village. A companion item on tonight's Agency Board agenda requests reducing the previously appropriated Agency Housing funds by \$1,059,991 and replacing them with an equal amount of HOME funds.

**BACKGROUND:** Allied Housing and Mid-Peninsula Housing Coalition (MPHC) are partnering with the City and the Redevelopment Agency on the proposed Main Street Village, a 64-unit extremely low and very low income supportive housing development to be built on the corner of 3615/3657 Main Street and 41037/41045 High Street in the Irvington Redevelopment Area. The three-story, one, two and three-bedroom development includes a parking garage, 3,400 square feet of ground floor office space, and about 18,700 square feet of common area, including a community room, laundry room and open space area. The proposed development will also include a significant supportive services component. Allied Housing will contract with Abode Services to provide on-site service coordination for the supportive housing units. In July, the City Council approved a land-use designation change and rezoning to allow development of the project. Since committing to the project in late 2007, the developer has purchased the 1.6-acre project site, completed much of the predevelopment work and submitted an application to the City to obtain building permits.

**DISCUSSION/ANALYSIS:** The \$28.9 million Main Street Village project will be financed primarily by federal American Recovery and Reinvestment Act (ARRA) funds administered by the California Tax Credit Allocation Committee (TCAC). In December, TCAC notified the developer that the project's approximately \$20 million of ARRA funds was approved, allowing the project to proceed as anticipated. Main Street Village will also be financed by other sources, including Alameda County Mental Health Services Act (MHSA) funds, Alameda County HOME funds and Fremont Redevelopment Agency housing funds. The chart below summarizes all anticipated funding sources for the project:

<b>PROPOSED MAIN STREET VILLAGE-FUNDING SOURCES SUMMARY</b>		
<b>SOURCE</b>	<b>Scenario A: Agency bridge loan repaid</b>	<b>Scenario B: Agency bridge loan not repaid</b>
Fremont RDA Housing Fund Loan	\$1,345,359	\$2,785,359
Fremont Federal HOME Program Loan (Note 1)	\$1,059,991	\$1,059,991
Fremont State HELP Program Loan	\$3,000,000	\$3,000,000
Fremont Federal CDBG Grant	\$200,000	\$200,000
<b>Subtotal: City of Fremont/RDA Funds (Note 2)</b>	<b>\$5,605,350</b>	<b>\$7,045,350</b>
TCAC Conditional Grant (Cash In Lieu Award)	\$19,958,952	\$19,958,952
Alameda County Mental Health Services Act (MHSA)	\$1,040,000	\$1,040,000
Alameda County HOME (Note 2, 3)	\$800,000	0
Affordable Housing Program (AHP) (Note 2, 4)	\$640,000	0
General Partner Equity	\$24,842	\$24,842
First Mortgage (Section 8 income)	\$800,000	\$800,000
<b>TOTAL SOURCES</b>	<b>\$28,869,144</b>	<b>\$28,869,144</b>
<p><b>Note 1.</b> City HOME funds of \$1,059,991 are proposed for approval by the City Council this evening in order to reduce the use of Agency Affordable Housing funds from \$3,845,350 to \$2,785,359.</p> <p><b>Note 2.</b> The City of Fremont/RDA funding amounts differ by \$1,440,000. This difference represents a \$1,440,000 “bridge loan” included in the \$7,045,350 maximum loan amount to cover \$800,000 of Alameda County HOME funds and \$640,000 of Affordable Housing Program funds that are anticipated but have not yet been secured. The developer is expected to repay the bridge loan by fall 2010 should these financing sources become available.</p> <p><b>Note 3.</b> \$400,000 of HOME funding was approved by the Alameda County Board of Supervisors in November 2009. The developer will apply for another \$400,000 of HOME funds in the next Alameda County funding round.</p> <p><b>Note 4.</b> In October, the developer applied for AHP funds. Awards were announced in December, but unfortunately the project did not receive an award. The developer will be re-applying to AHP for a grant in the next round (April 2010).</p>		

**City/Agency Financing:** To date, the Agency Board has approved up to \$7,045,350 of affordable housing funds for Main Street Village. These funds consist of Agency Affordable Housing funds (\$3,845,350), State HELP funds (\$3,000,000) and Community Development Block Grant funds (\$200,000) approved by the City Council. When staff recommended funding for the project to the Agency Board in July, the intent was to also include City HOME Program funds as part of the development loan. At the time, however, it was not possible to complete the required National Environmental Policy Act (NEPA) environmental review due to the accelerated TCAC application deadline. That review has since been completed. In August 2009, Alameda County, lead agency in the HOME Consortium, completed the NEPA environmental review and determined that the project will have no significant impact on the environment. HUD has also approved the release of HOME funds.

The City has \$1,059,991 of HOME funds available to commit to the project. Staff recommends that the City Council appropriate \$1,059,991 of HOME funds to assist with the construction of Main Street

Village. On the Agency agenda this evening, the Agency Board will consider reducing its commitment to the project by \$1,059,991 (from \$3,845,350 to \$2,785,359, as reflected in the above proposed funding summary chart). Total Agency and City funds committed to Main Street Village would remain at \$7,045,350.

**Development Schedule:**

- February 28, 2010 – Obtain Building Permits
- March 2010 – Commence Construction
- July 2011 – Complete Construction
- October 2011 – Full Occupancy

**FISCAL IMPACT:** Staff is recommending that \$1,059,991 of Agency Housing funds previously committed to Main Street Village be replaced by the same amount of HOME funds. There is no net impact to the project.

**ENVIRONMENTAL REVIEW:** In August 2009, Alameda County completed the National Environmental Policy Act (NEPA) environmental review and determined that the project will have no significant impact on the environment. Therefore, an Environmental Impact Statement under NEPA is not required. No CEQA review is required for this funding exchange action; however, a Mitigated Negative Declaration has been prepared and circulated for this project in accordance with the requirements of the California Environmental Quality Act.

**ENCLOSURE:** [Draft resolution](#)

**RECOMMENDATION:** Adopt a resolution to:

1. Appropriate \$1,059,991 in HOME funds to Allied Housing's Main Street Village project (911HHD6113), located in the Irvington Project Area; and
2. Approve the substitution of \$1,059,991 in previously approved Agency Affordable Housing funds with an equal amount of HOME funds in the form of a loan, subject to the conditions set forth in the loan terms previously approved by the Agency Board; and
3. Authorize the City Manager or his designee to take such other actions and execute loan documents prepared and approved by the Agency's Special Counsel and City Attorney.

## **\*2.8 TRANSMITTAL OF FY 2008/09 AUDIT REPORTS**

### **Transmittal of FY 2008/09 Audit Reports**

#### **Contact Person:**

Name:	Gloria del Rosario	Harriet Commons
Title:	Senior Accountant	Director
Dept.:	Finance	Finance
Phone:	510-494-4602	510-284-4010
E-Mail:	gdelrosario@fremont.gov	hcommons@fremont.gov

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**Executive Summary:** The independent audit of the City's comprehensive annual financial report (CAFR) for the fiscal year ended June 30, 2009, by the independent accounting firm of Caporicci & Larson, is complete and those financial statements have been issued with an unqualified ("clean") opinion from the auditors. In addition to the audit of the City's financial statements, there are other audits the City is required to undergo, and those occur at the same time as the overall City audit. All of these other audits and procedures resulted in unqualified ("clean") reports from the City's independent auditors, and the City continues to have no material internal control weaknesses. Staff recommends that the City Council receive and file the audit reports.

**BACKGROUND:** Various financing covenants and regulations associated with restricted funding sources require the City to publish a complete set of financial statements (also referred to as the comprehensive annual financial report or CAFR) presented in conformance with generally accepted accounting principles (GAAP) and audited by a firm of licensed certified public accountants. These statements, for the fiscal year ended June 30, 2009, have been prepared, and they have been audited by the certified public accounting firm of Caporicci & Larson, which has issued an unqualified ("clean") opinion on them.

The reporting entity for these financial statements is defined as the City itself, as well as those separate legal entities for which the City Council exercises significant control, namely, the Redevelopment Agency of the City of Fremont, the Fremont Public Financing Authority, and the Fremont Social Services Joint Powers Authority. The transactions of these other separate entities are combined with those of the City in preparing the City's comprehensive annual financial report because to omit them would cause the City's financial statements to be misleading under generally accepted accounting principles.

**DISCUSSION/ANALYSIS:** The City's financial statements provide information about the finances of the City in its entirety, as well as information about individual funds. The General Fund is the chief operating fund of the City. At the end of FY 2008/09, total fund balance in the General Fund was \$31,099,000. Of this amount, \$386,000 was reserved for encumbrances for purchase orders issued prior to June 30, 2009, but for which the goods or services were not received prior to year-end. In addition, \$18,302,000 was designated by City Council policy for use for costs associated with unforeseen events (contingencies), and \$3,660,000 was designated by City Council policy for start-up costs for future programs with potential to generate revenues sufficient to cover costs and repay the start-up investment. Both of these policies were adopted by the City Council in June 1996, and these are the City's designated "primary reserves."

In addition, \$7,690,000 was designated as a budget uncertainty reserve to provide funds to mitigate the effects of significant levels of financial volatility related to the uncertain economic environment and the unknown effects of the State budget. A positive \$1,061,000 was designated for fair market value adjustments on the City's investment portfolio for net gains recognized by the City, but not yet realized at June 30, 2009.

Below is a schedule that summarizes the above information. Because the City's reserves are included in the General Fund for financial reporting purposes, they need to be deducted from total General Fund fund balance to determine the amount available for appropriation:

**GENERAL FUND BUDGETARY FUND BALANCE AT THE END OF 2008/09**

Total fund balance, June 30, 2009	\$ 31,099,000
Less: Reserve for encumbrances	( 386,000)
Unreserved fund balance	30,713,000
Less: Designations for –	
Contingency reserve	( 18,302,000)
Program investment reserve	( 3,660,000)
Budget uncertainty reserve	( 7,690,000)
Unrealized investment gains	( 1,061,000)
Fund balance at June 30, 2009, available for appropriation in FY 2009/10	\$ 0

This is the first time in many years that the General Fund has had no fund balance available for appropriation to carry forward into the next fiscal year (FY 2009/10). In FY 2008/09, there was \$3,132,000 of beginning fund balance available to fund FY 2008/09 appropriations. In addition to using all of that beginning fund balance, \$3,486,000 of the Budget Uncertain Reserve was also required to balance the General Fund operating budget in FY 2008/09. This is \$3,795,000 less than the estimate of the amount needed (\$7,281,000) in May 2009, at the time the FY 2009/10 operating budget was considered by the City Council. This is the first time since its creation in 2002 that the Budget Uncertainty Reserve has been used. The components of the difference, on a budgetary basis, between the May 2009 estimate and the audited actual amounts are summarized in the table below:

**FY 2008/09 General Fund Summary – Budget Basis**

	<b><u>May 2009 Estimate</u></b>	<b><u>Audited Actual</u></b>	<b><u>Difference from May 2009 Estimate</u></b>
Revenues and transfers in	\$ 134,528,000	\$ 134,076,000	(\$ 452,000)
Expenditures and transfers out	<u>144,941,000</u>	<u>140,694,000</u>	<u>4,247,000</u>
<b>Net results of operations</b>	<b>( 10,413,000)</b>	<b>( 6,618,000)</b>	<b>3,795,000</b>
Use of Budget Uncertainty Reserve	7,281,000	3,486,000	( 3,795,000)
Fund balance, July 1, 2008	<u>3,132,000</u>	<u>3,132,000</u>	<u>0</u>
<b>Fund balance, June 30, 2009</b>	<b><u>\$ 0</u></b>	<b><u>\$ 0</u></b>	<b><u>\$ 0</u></b>



The amounts, above, are slightly different than amounts reported in the CAFR because of a difference in reporting treatment for items like transfers to the primary reserves and unrealized investment gains/losses. For example, transfers to the primary reserves are treated as transfers out of the General Fund for budget purposes, but are not reported for CAFR purposes because the primary reserves are combined with the General Fund.

Revenues overall were 1.4% less in FY 2008/09, as compared to FY 2007/08, and they wound up \$452,000 less than staff's year-end estimate in May 2009. The primary components of the lower revenues were sales tax (\$1.6 million), transient occupancy tax (\$200,000), and property transfer tax (\$100,000), all of which reflect the effects of the global economic recession on Fremont. Those lower revenues were partially offset by property tax collections (\$1.4 million) and franchise fees (\$100,000) that were above staff estimates.

Sales tax revenues were 11.1% less in FY 2008/09 as compared to FY 2007/08. Declines were experienced in all sales tax categories. In the prior year, declines had been confined to transportation and construction, while business-to-business and general retail sales actually increased.

Transient occupancy tax (TOT) collections declined 10% from the prior year. Although the City Council adopted, and the voters approved, a new transient occupancy tax rate (from 8% to 10%) that went into effect on January 1, 2009, transient occupancy tax revenue was \$200,000 less than anticipated in May 2009, because both occupancy and room rates have continued to decline. Without the increase in the TOT rate, the TOT revenue would have been \$277,000 less, which would have been an 18.7% decrease from the prior year.

Actual property tax revenues, consisting of both base property tax and VLF property tax replacement, grew by 5.2% in FY 2008/09, and were \$1.4 million more than the year-end estimate. Secured property taxes revenues were as expected. The increase was primarily due to collections of prior year delinquencies that occurred with the sale of foreclosed properties.

Offsetting the lower revenues were \$4,247,000 in expenditure savings from ongoing department efforts to save money wherever possible, as well as savings from staff vacancies that often occur because of a lag between the time employees retire or otherwise leave City employment and the time new staff are hired to fill those vacant positions. The primary components were \$1.3 million in savings resulting from the City's prepayment of its employer contributions to CalPERS in FY 2008/09, \$800,000 in savings on variable rate debt service payments, and \$2.1 million in departmental savings in all departments. The net result of \$452,000 less revenues and \$4,247,000 in expenditure savings is \$3,795,000 that wasn't needed from the Budget Uncertainty Reserve.

Another important indicator of the General Fund's overall fiscal condition is the difference between revenues and transfers in, and expenditures and transfers out. For FY 2008/09, this amount for the total General Fund (including amounts designated by the City Council as reserves) was a negative \$6,618,000. When the amount transferred from General Fund operations to the "primary reserves" of \$601,000 is deducted, the General Fund's "net results of operations" for FY 2008/09 comes in at a negative \$6,017,000. In other words, revenues and expenditures were out of balance for FY 2008/09. This out-of-balance condition required the use of fund balance, which caused the fund balance to decrease from \$3,132,000 in July 2008 to \$0 on June 30, 2009, and the use of \$3,486,000 of the Budget

Uncertainty Reserve. Aggressive actions were taken with the adoption of the FY 2009/10 operating budget to reduce costs and services in an effort to achieve ongoing fiscal sustainability.

In addition to the audit of the City's financial statements, there are other audits the City is required to undergo, and those occur at the same time as the overall City audit. These are financial and compliance audits of different sources of funds the City receives (for example, CDBG, as part of the federally-mandated "Single Audit," Measure B, and Transportation Development Act funds), as well as procedures performed to assess the accuracy of the City's calculation of its constitutional appropriations limit. The standards governing Single Audit engagements require the independent auditor to report not only on the fair presentation of the financial statements, but also on the audited government's internal controls and compliance with legal requirements, with special emphasis on internal controls and legal requirements involving the administration of federal monies. All of these other audits and procedures resulted in unqualified reports from the City's independent auditors.

Separate financial statements are prepared for the City's Redevelopment Agency, and these separate financial statements are also audited. The audit report was unqualified ("clean").

An important element of the annual audit is a review by the auditors of the City's system of internal control. Management of the City has established a comprehensive internal control framework that is designed both to protect the City's assets from loss, theft or misuse, and to compile sufficient reliable information for the preparation of the City of Fremont's financial statements in conformance with GAAP. Because the cost of internal controls should not outweigh their benefits, the City's comprehensive framework of internal controls has been designed to provide reasonable, rather than absolute, assurance that the financial statements will be free from material misstatement.

No material internal control weaknesses were noted. If the auditors had found any material internal control weaknesses, they would have been required to report those directly to the City Council, and to the federal government. The reports the auditors issued as a result of the FY 2008/09 audit indicate the City continues to have no material internal control weaknesses.

The audit reports have been distributed to Council. In addition, copies are available for review in the City Clerk's Office or in the Finance Department.

**FISCAL IMPACT:** Unqualified ("clean") audit reports and no material internal control weaknesses are an indication that City funds are being spent appropriately and as intended by the City Council, grantor agencies, federal and State loans. They also help maintain the City's favorable bond ratings.

**ENVIRONMENTAL REVIEW:** None required.

**ENCLOSURE:** None

**RECOMMENDATION:** Receive audit reports and file.

**\*2.9 KING & LYONS DEVELOPMENT AGREEMENT AMENDMENT – FOR PROPERTY GENERALLY LOCATED AT S. TERMINUS OF FREMONT BOULEVARD, NORTH OF DIXON RD. (PLN2009-00187)**  
**Public Hearing (Published Notice) to Consider the Planning Commission’s Recommendation of an Ordinance to Amend Development Agreement DA-92-1 To Allow a Time Extension and Update of Terms For Property Located at the Southern Terminus of Fremont Boulevard, North of Dixon Landing Road Interchange, and West of Interstate 880 in the Industrial Planning Area.**

**Contact Person:**

Name:	Clifford Nguyen	Jeff Schwob
Title:	Associate Planner	Planning Director
Dept.:	Community Development	Community Development
Phone:	510-494-4769	510-494-4527
E-Mail:	cnguyen@fremont.gov	jschwob@fremont.gov

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**Executive Summary:** The developer, King & Lyons, requests an amendment (an Ordinance) to Development Agreement DA-92-1 (DA). The DA encompasses a 147-acre site that is located at the southwestern end of the City, where Fremont Boulevard presently terminates to the south and just north of Dixon Landing Road and west of Interstate 880. In 1994, the original DA was approved for a 12-year term. The City Council later approved an extension of its term an additional four years to March 2010. As the DA is set to expire, the developer requests an amendment for a ten-year extension of the DA to March 2020 with additional changes related to the construction of Fremont Boulevard. For the reasons stated in this report, the staff and Planning Commission recommend that the City Council approve the amendment as shown in Exhibit “A.”

**BACKGROUND:** In March 1994, the Planning Commission recommended and the City Council approved a 12-year Development Agreement (DA-92-1) for the 147-acre project site, commonly known then as Bayside Business Park II. The approved project includes 59 acres of upland area approved for nine developable lots (adjacent to Interstate 880), a right-of-way with complete improvements for extension of Fremont Boulevard to Dixon Landing Road, and a larger remainder wetland area adjacent to Old Coyote Creek and the existing Don Edwards Wildlife Refuge. The Development Agreement (DA-92-1) provided the developer with assurances for an original 12-year duration that the project may proceed as originally approved, and not be affected by future changes in City-related land use regulations. In exchange for this assurance, the developer agreed to certain City interests that were also contained in the DA (see “Development Agreement” enclosed).

In March 2006, for the first amendment to the DA, the Planning Commission recommended and City Council approved a 4-year extension to March 31, 2010.

In October 2008, the Planning Commission recommended and City Council approved a second amendment to the DA to recognize that its “specified existing approvals project list” included additional projects that are consistent with allowable uses of the Commercial/Industrial Overlay (C-I Overlay).

On December 10, 2009, the Planning Commission recommended (6-1) this proposed third amendment to the DA presently before the Council. In a companion item (PLN2008-00117), the Planning Commission also certified an EIR, adopted Statement of Overriding Considerations (for unavoidable air quality and traffic impacts), and approved a Conditional Use Permit and other permits to allow the development of the site with a 487,000 square foot shopping center, known as “Creekside Landing.”

**PROJECT DESCRIPTION:** The developer proposes a third amendment to the DA. The third amendment would include:

1. A ten-year extension of the DA’s term to expire on March 31, 2020. (Section 1 of DA)
2. A Traffic Impact Fee (TIF) credit for the construction of the Fremont Boulevard from its current terminus to the City of Milpitas. (Added Section 2.2.1 to DA)
3. A reimbursement to the Developer of up to the amount of one million one hundred seventy-four thousand four hundred forty-five dollars (\$1,174,445.00) from the City’s Interchange Construction Fund (Fund 188) for the construction of the Dixon Landing interchange improvements, within ninety (90) days after completion. (Added Section 2.2.1 to DA)

## **DISCUSSION/ANALYSIS:**

### *Development Agreement/City Interests*

The general intent of a development agreement is to strengthen the public planning process; encourage private participation in the comprehensive planning; and, reduce the economic costs of development. It is a tool for establishing a vested right to proceed with development in conformance with the policies, rules, and regulations in effect at the time of approval. A development agreement provides a developer with assurances for a specified length of time that his/her project may proceed as originally approved, and not be affected by future changes in land use regulations. In many cases, and in exchange for this assurance, the developer (in this case also landowner) agrees to certain City interests for public use as a condition of the agreement.

Staff finds the following City interests would be achieved with the proposed Amendment. The Amendment would:

- Continue to encourage development in the southern portion of Fremont, consistent with the City General Plan and Zoning Ordinance, which will provide substantial revenues to the City, business development opportunities, and completion of key traffic infrastructure.
- Extend the term of the DA for an additional ten years in light of current economic times to allow the developer additional time to obtain City and regulatory agency approvals and develop the property, as the site is adjacent to an 88-acre wetland preserve, flood control channel, CalTrans right-of-way and State land.
- Provide a Traffic Impact Fee (TIF) credit and interchange reimbursement to contribute towards the cost of the Fremont Boulevard extension from its current terminus to the Dixon Landing Interchange, recognizing the substantial regional and citywide benefits of completing the arterial street network.

On this basis, staff recommends the third amendment enclosed (Exhibit “A”).

***General Plan Conformance:***

The existing General Plan land use designation for the project site is Restricted Industrial, Commercial/Industrial Overlay (approximately 59 acres) and Open Space (remaining larger wetland area). The amendment implements the General Plan by incorporating important economic, social, environmental and planning goals of the City that are recognized by the General Plan for the Restricted Industrial District with a Commercial/Industrial Overlay.

***Zoning Regulations:***

Consistent with State law (§65864 *et seq.*), Chapter 7, Title 8 of the Fremont Municipal Code (FMC), contains provisions that establish procedures and requirements for consideration of a development agreement. Staff finds that the terms of the agreement comply with these standards.

**FISCAL IMPACT:** The proposed Development Agreement Amendment memorializes an eligible Traffic Impact Fee (TIF) credit towards the cost of installing a second through lane on northbound Fremont Boulevard at Landing Parkway. Additionally, the DA Amendment provides for use of the project’s remaining Traffic Impact Fees toward the cost of constructing the Fremont Boulevard extension. The amounts to be credited will be determined based upon several factors including but not limited to: the square footage of development constructed, the eligible costs relating to installation of the Fremont/Landing improvement and TIF rates in effect at the time of project completion.

In 2010 dollars, based upon a \$487,000 square foot retail development, the Traffic Impact Fee (inclusive of the 10% citywide impact fee reduction in effect through December 2011) would amount to a maximum of \$3,813,210. The Development Agreement Amendment provides that the remaining balance of TIF monies associated with the project may be credited to the Fremont Boulevard Extension after deducting credits associated with the required construction of the second through lane on northbound Fremont Boulevard. Use of this additional TIF credit will require the City to identify replacement funding from other sources (e.g., state or federal infrastructure grants) in order to complete other citywide TIF program improvements. Because the TIF program is of multi-year duration and because the City can prioritize improvements based upon available funding it provides flexibility in securing replacement funding over time.

Finally, the DA Amendment also provides for reimbursement of not more than \$1,174,445 for improvements to the Dixon Landing Interchange. Funds have been previously collected and set aside for these improvements.

**ENVIRONMENTAL REVIEW:** Development of the subject site recently was analyzed in the Creekside Landing EIR (SCH#2008042116). The EIR was certified in accordance with the requirements of CEQA on December 10, 2009 as part of the Planning Commission approval of the shopping center conditional use permit. The proposed DA amendment is a subsequent implementing component of the development of the subject site. The DA amendment is consistent with scope and analysis of the previously certified EIR and approved project and there is no additional environmental review required per CEQA Guideline 15162.

## ENCLOSURES:

- [Draft Ordinance](#)

### *Exhibit:*

- [“A” – Third Amendment to Development Agreement DA-92-1](#)

### *Informational Items:*

- [1. Development Agreement DA-92-1 \(March 1, 1994\)](#)
- [2. March 2006 First Amendment, DA-92-1](#)
- [3. October 2008 Second Amendment, DA-92-1](#)

## RECOMMENDATIONS:

1. Hold public hearing.
2. Find the proposed project (Third Amendment to DA—PLN2009-00187) is in conformance with relevant provisions contained in the City’s General Plan. These provisions include the designations, goals and policies set forth in the General Plan’s Land Use Chapter under Restricted Industrial District, Commercial/Industrial Overlay.
3. Find the proposed project (Third Amendment to DA—PLN2009-00187) is in compliance with the applicable requirements as set forth in the Fremont Municipal Code.
4. Find that the proposed project is consistent with the scope and analysis of certified EIR (SCH#2008042116) and that no additional environmental review is required per CEQA Guideline 15162 as there have been no changes to the project involving new significant or substantially increased environmental effects, changes to circumstances, or new information concerning significant effects, mitigations, or alternatives.
5. Waive full reading and introduce an Ordinance amending Development Agreement DA-92-1 by a) extending the term of the Agreement for ten years to March 31, 2020; and, b), providing a Traffic Impact Fee credit and Interchange Improvement Reimbursement as specified in the Third Amendment.
6. Direct staff to prepare and the Clerk to publish a summary of the above Ordinance.

**\*2.10 RAISCH PRODUCTS TIME EXTENSION – 7010 AUTO MALL PARKWAY**

**Public Hearing (Published Notice) to Consider a Planning Commission Recommendation of a Planned District Major Amendment (Introduction of an Ordinance) and Zoning Administrator Permit Amendment to Allow a Time Extension for the Required Cessation Date of a Previously Approved Interim Concrete Recycling Facility from January 1, 2012 to December 31, 2015 (PLN2010-00062)**

**Contact Person:**

Name:	Steve Kowalski	Jeff Schwob
Title:	Associate Planner	Planning Director
Dept.:	Community Development	Community Development
Phone:	510-494-4532	510-494-4527
E-Mail:	skowalski@fremont.gov	jschwob@fremont.gov

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**Executive Summary:** On October 27, 2007, the City Council approved a Rezoning of a portion of the subject property to Planned District P-2005-262(F) to allow for various interim uses at the old Tri-Cities Recycling and Disposal Facility landfill site until a final reuse plan for the site is submitted to the City for consideration. A Zoning Administrator Permit was subsequently issued to the applicant (Raisch) in December 2007 to allow for the interim use of a portion of the site for concrete and asphalt recycling. The Planned District (PD) guidelines and Zoning Administrator Permit only granted Raisch three years to operate its facility at the site with an option to renew the permit, but requiring all operations to cease by January 1, 2012. Raisch is now requesting approval of a time extension to enable it to continue operating until a final cessation date of December 31, 2015. Because the PD regulations specifically required the use to cease January 1, 2012, a PD Major Amendment is required to change the date to December 31, 2015. Approval of the proposed amendment would also require amending the Zoning Administrator Permit to enable the use to continue operating until the new date.

**BACKGROUND:** The Tri-Cities Recycling and Disposal Facility, formerly known as the Durham Road Landfill, began receiving municipal solid waste in 1967 and began recycling activities in 1991. Operation of the facility is currently regulated by a municipal contract agreement for landfill operations and by Conditional Use Permit (CUP) PLN2000-00085. The CUP and contract agreement established major milestones for the eventual closure of the facility which included a maximum landfill height of 150 feet, closure to the public in July 2007, and submittal of a land reuse plan prior to the final closure of the facility.

On October 23, 2007, the City Council approved a General Plan Amendment and Rezoning of a portion of the landfill facility to allow for the continued use of the property by interim waste and recycling related activities while the final reuse plan was prepared (PLN2005-00262). The two interim uses that were ultimately permitted to occupy the property were a corporation yard and maintenance facilities for a fleet of up to 50 refuse collection vehicles, as well as a concrete and asphalt recycling. The corporation yard was permitted by right under the PD standards and allowed to operate until July 31, 2015, while the concrete/asphalt recycling facility required a Zoning Administrator Permit and was allowed to operate until no later than January 1, 2012.

On December 27, 2007, the Zoning Administrator approved Zoning Administrator Permit PLN2007-00328 to allow Raisch to conduct concrete and asphalt recycling activities on the subject property with the condition that it cease all operations by January 1, 2010 in accordance with the restrictions contained in the PD standards. On September 14, 2009, Raisch applied for a time extension to enable it to continue operating until a final cessation date of December 31, 2015. The Planning Commission considered this matter on December 10, 2009 and voted unanimously to forward it to the City Council with a recommendation for approval.

## **DISCUSSION/ANALYSIS:**

**Project Description:** Raisch currently runs a permitted concrete and asphalt recycling operation on a portion of the subject property just inside the gates of the old landfill at the western terminus of Auto Mall Parkway. Raisch's current Zoning Administrator Permit (PLN2007-00328) only allows them to operate the use at the site until January 1, 2010 with an option of requesting an extension until January 1, 2012. Raisch is now requesting approval to allow the operation to continue running for an additional 3 years, with a final cessation date of December 31, 2015. No changes in the, size, nature or intensity of the use are being proposed, only an extension of time to allow the use to continue operating on the property until the end of 2015.

**Planned District Major Amendment:** Fremont Municipal Code Section 8-21814(c) requires that the decision-making body make the following findings in order to approve a Planned District Major Amendment:

1. The proposed amendment conforms to the standards and requirements for Planned Districts contained within Municipal Code Section 8-21811;
2. The proposed amendment conforms to the findings required within Municipal Code Section 21813; and
3. The proposed amendment is in keeping with the original intent of the Planned District approval.

The following findings are recommended in regard to the proposed PD Major Amendment:

1. In this case, the proposed amendment conforms to the PD standards and requirements prescribed by Municipal Code Section 8-21811 in that it merely involves allowing a use that is already specifically permitted under the previously approved PD standards to continue operating for an additional amount of time, with no changes in the nature, size or intensity of the use. Furthermore, there have been no significant changes to or new developments on the other properties in the area that would render the use incompatible.
2. In this case, the findings prescribed by Municipal Code Section 8-21813 were already made when the establishment of Planned District P-2005-262(F) was approved by the City Council in October 2007. The proposed amendment would not change the nature, location, or intensity of the land uses permitted to operate in the PD, only the duration of time that one of the uses would be allowed to operate. In addition, it would not change the final deadline that a final reuse plan for the landfill site must be submitted in 2015. As such, it conforms to the original findings made when the PD was approved by the City Council in 2007.
3. The proposed amendment is in keeping with the original intent of the PD approval in that the original approval granted certain refuse and recycling-related uses to continue operating at the



site which were clearly compatible with the former use of the property as a landfill. The original intent of the PD was to provide opportunities for uses that could help the City achieve its waste diversion goals in a geographic area where conflicts and/or incompatibility with adjacent land uses would be negligible.

Specifically, the PD allowed a portion of the site to be used by right as a corporation yard for refuse collection vehicles and landfill maintenance vehicles until July 31, 2015, and another portion to be used for concrete and asphalt recycling until January 1, 2012 subject to the approval of a Zoning Administrator Permit. Raisch obtained the required Zoning Administrator Permit and has been conducting concrete and asphalt recycling activities at the site since December 2007. Allowing Raisch to continue operating until the proposed cessation date of December 31, 2015, with no changes made to the nature, intensity or physical area of the use, and subject to the same conditions of approval, would be in keeping with the original intent of the PD in that it would only change the duration of time that the use is allowed to continue. It will not affect the date that the final reuse plan must be submitted to the City for approval.

**Zoning Administrator Permit Amendment:** Pursuant to Section 8-22559.2 of the Municipal Code, the decision-making body must consider the following items in order to approve an amendment to a previously approved Zoning Administrator Permit:

- (a) The suitability and adequacy of the site for the proposed use;
- (b) The estimated effect of the proposed use or its design on traffic circulation and on the planned capacity of the street system and other public facilities or services;
- (c) The estimated economic effect of the proposed use on nearby uses;
- (d) The estimated impact of the proposed use on the general welfare of persons residing within the community; and
- (e) The compatibility of the design with adjacent uses within the district and its surroundings.

The following findings are recommended in regard to the Zoning Administrator Permit Amendment:

- (a) The site is suitable and adequate for the proposed extended duration of time because the location and type of use are still compatible with the surrounding land uses in that it is at the edge of an industrial area adjacent to other solid waste collection and recycling-related uses with no sensitive uses located nearby, and there will be no expansion or intensification of the use so no additional land area is needed.
- (b) Allowing the extended duration of the use would not have a substantial adverse effect on traffic circulation, on the planned capacity of the street system or on other public facilities in that it would not involve any intensification or expansion of the current use and is consistent with the certified EIR. Instead, it will only give the applicant additional time to continue operating at the site while a final landfill reuse plan is drafted by the property owner.
- (c) Allowing the extended duration of the use would not have an adverse economic effect on nearby uses in that the surrounding area continues to be used primarily for industrial and light industrial land uses that are compatible with this type of operation. In addition, allowing the use to continue operating until the end of 2015 will not result in the forced closure of competing businesses or provide any unfair advantage for the applicant.

- (d) Allowing the extended duration of the use would not have a significant adverse impact on the population residing in the community in that it would not involve the expansion, relocation or intensification of the use. As such, it will continue to be geographically separated from residential and other sensitive uses within the community and not pose a significant nuisance to the City's residents.
- (e) Allowing the use to continue operating through the year 2015 in the same manner that it currently operates would be compatible with the surrounding uses in that the site is located at the edge of an industrial area near other trash- and recycling-related uses as well as other heavy industries. There are no existing or proposed sensitive uses in the immediate vicinity that would be adversely impacted by allowing the use to continue operating for the proposed duration.

**PLANNING COMMISSION ACTION:** On December 10, 2009, the Planning Commission voted unanimously to recommend approval of the item to Council.

**FISCAL IMPACT:** N/A.

**ENVIRONMENTAL REVIEW:** An Environmental Impact Report (EIR State Clearinghouse #2001122003) was previously adopted for the original approval of the establishment of the Planned District in accordance with the requirements of the California Environmental Quality Act (CEQA). Because the proposed time extension would not change the nature or intensity of the Planned District or enable the use to continue beyond the ultimate deadline for the landfill reuse plan of January 1, 2015, it is consistent with and within the scope of the previously adopted EIR which adequately addressed the potentially significant environmental impacts caused by the project. As such, no further environmental review is necessary.

**PUBLIC NOTICE AND COMMENT:** Public hearing notification is required for the proposed amendments. A total of 28 notices were mailed to the owners and occupants of all property located within at least 300 feet of the site by the City Clerk's Office on Wednesday, December 30, 2010. A Public Hearing Notice was also published in *The Tri-City Voice* on this same date.

**ENCLOSURES:**

- [Draft Ordinance](#)

**Exhibits:**

- ["A" – Landfill Closure Planned District P-2005-0262\(F\)](#)
- ["B" – Recommended Findings for Approval](#)
- ["C" – Amended Conditions of Approval](#)

**Informational Items:**

1. [Project Description submitted by Applicant](#)
2. [Aerial Site Plan Exhibit submitted by Applicant](#)
3. [Informational Enclosure](#)

**RECOMMENDATION:**

1. Hold public hearing;
2. Find that the project is consistent in nature and scope with the original Planned District approval previously analyzed in Environmental Impact Report SCH#2001122003 and that therefore no further environmental review is necessary;

3. Waive full reading and introduce an ordinance amending Planned District P-2005-262(F) to allow concrete and asphalt recycling activities to continue at the subject property until December 31, 2015 in accordance with Exhibit "A" based on the findings contained in Exhibit "B"; and
4. Approve the proposed the Amendment to Zoning Administrator Permit PLN2007-00328 as per Exhibit "C".

**\*2.11 AMENDMENT TO ADULT USE ZONING REGULATIONS (PLN2010-00105)**  
**To Consider a Public Hearing (Published Notice) to Waive Full Reading and Introduce an Ordinance to Consider Planning Commission Recommendation to Amend Fremont Municipal Code Title 8, Chapter 2 to Prohibit the Use "Adult Encounter Center" Citywide and Make Minor Changes to the Locational Criteria**

**Contact Person:**

Name:	Jennifer Brame	Jeff Schwob
Title:	Associate Planner	Planning Director
Dept.:	Community Development	Community Development
Phone:	510-494-4554	510-494-4527
E-Mail:	jbrame@fremont.gov	jschwob@fremont.gov

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**Executive Summary:** The proposed Zoning Text Amendment would prohibit the use “adult encounter center” anywhere in the City, as well as make minor amendments to the locational criteria for other types of adult-oriented business uses. Currently, adult encounter centers and other adult-oriented businesses may only locate in the Central Business District (CBD) with approval of a conditional use permit. At this time, there are no adult encounter centers in the City.

On December 10, 2009, the Planning Commission conducted a public hearing on the proposed Zoning Text Amendment and recommend the City Council approve the project based on findings contained in Section 1 of the proposed ordinance.

**PROJECT DESCRIPTION:** The proposed Zoning Text Amendment refines the definition of “adult encounter centers” and specifically prohibits the use in the CBD by expressly not permitting the use anywhere in the City.

FMC Section 8-2102 provides the definitions applicable to the various types of “adult-oriented businesses.” Many types of adult uses involve expressive conduct protected by the First Amendment to the U.S. Constitution. As such, the City must allow these uses some place within its jurisdictional boundaries. The CBD is the only zoning district that allows adult-oriented businesses, where the use requires a conditional use permit to operate.

The specific adult-oriented business use called “adult encounter center” is not constitutionally protected as the use has not been found by the courts to involve protected expressive conduct. “Adult encounter center” is currently defined as follows:

*Any business, agency or person who, for any form of consideration or gratuity, provides a place where one or more persons, not all of the same family, may congregate, assemble or associate for the purpose of engaging in specified sexual activities or exposing specified anatomical parts.*

The courts have found that adult encounter centers, also known as “sex clubs,” do not foster assemblages for the advancement of beliefs and ideas; rather, they have found this use to provide a commercial service for those who wish to find a partner to engage in specified sexual activities. Because

the City is not required to allow this use, and this use typically has many significant negative impacts on the community, staff recommends that the use not be permitted anywhere in the City. As part of the Zoning Text Amendment, the use would be renamed “sexual encounter establishment” and the definition revised to provide a more transparent description of the use’s business operation, as follows:

Any establishment, including but not limited to, private and commercial businesses, clubs or organizations, that provides in return for any form of consideration or gratuity a place where two or more persons may congregate, assemble or associate for the purpose of engaging in specified sexual activities. This definition does not include a hotel, motel or similar establishment offering public accommodations or any other adult-oriented business as that term is defined in this Section. This definition does not include an establishment where a medical practitioner, psychologist, psychiatrist or similar professional person licensed by the State of California engages in sexual therapy as part of his or her state-licensed practice.

Minor modifications to locational criteria and streamlining of requirements for First Amendment conformance are also proposed. These changes simplify and clarify two sections of the FMC that currently have conflicting locational requirement standards. The proposed changes are as follows:

FMC Sec. 8-21206. Other required conditions.

[text preceding (a) unchanged]

(a) – (e) [text unchanged]

~~(f) No adult-oriented business shall be established or located within 600 feet of any other adult-oriented business.~~

~~(g) No adult-oriented business shall be established or located within 300 feet of any existing residential zone or use, park, church, school or other use frequented by children.~~

~~(h) The distances set forth above shall be measured from the footprint of that portion of the building or structure occupied by an adult-oriented business to the property lines of the property so zoned or used without regard to intervening structures. When a religious facility use is located within a multi-tenant industrial building or structure, the measurement shall be made from the footprint of the adult-oriented business to the footprint of the religious facility.~~

~~(i)~~ Internal and external storage of municipal solid waste, recyclables, and yard waste shall conform to the standards set forth in Article 21.3, Section 8-22155 of this Code.

FMC Sec. 8-22130. ~~Adult bookstore, adult nightclub, adult theater~~ Adult-oriented businesses.

~~No adult bookstore, adult nightclub or adult theater shall be located within:~~

~~(a) Three hundred feet of a residential district;~~

~~(b) Three hundred feet of any public or private school, park, playground, public building, church or any noncommercial establishment operated by a bona fide religious organization.~~

(a) No adult-oriented business<sup>1</sup> shall be established or located in any zoning district in the city other than the central business district.

(b) A sexual encounter establishment<sup>1</sup> as that phrase is defined in Section 8-2102(b)(4) is not permitted in any zoning district within the City of Fremont.

(c) No adult-oriented business<sup>1</sup> shall be established or located within 600 feet of any other adult-oriented business.

- (d) No adult-oriented business shall be established or located within 300 feet of any existing residential district, park, school, or religious facility.
- (e) The distances set forth above shall be measured from the footprint of that portion of the building or structure occupied by an adult-oriented business to the property lines of the property so zoned or used without regard to intervening structures. When a religious facility use is located within a multi-tenant industrial building or structure, the measurement shall be made from the footprint of the adult-oriented business to the footprint of the religious facility.

## **DISCUSSION/ANALYSIS:**

### ***General Plan Conformance:***

The following General Plan goal and objective are applicable to the proposed Zoning Text Amendment:

- **FUNDAMENTAL GOAL F-5:** A vibrant, well defined, visually distinctive Central Business District as the focus of the City's governmental, cultural, and commercial activity.
- **Objective Local Economy 3.3:** The Central Business District as the City's principal specialty-retail, regional office, entertainment, government, and cultural center.

*Conformance:*      *The Central Business District (CBD) allows for a variety of retail, office, service, cultural, and public uses. In order to ensure that allowed uses successfully compliment one another to create the vibrant, well-defined, distinctive area envisioned in the General Plan, uses that could jeopardize this success should be prohibited. The use adult encounter center is not an appropriate use for areas where all age groups, including families with children, gather for casual and civic activities and events. Because the City does not have to allow adult encounter centers, the proposed amendment would ensure that this use would not impact the existing and future prosperity of the CBD.*

### ***Negative Effects:***

Numerous studies have been completed documenting the deleterious secondary effects of adult-oriented businesses, including sexual encounter establishments, on communities (see supporting studies enclosed in this report). Some of these negative impacts include increased crime, blight in neighborhoods, and an increased threat of the spread of sexually transmitted diseases. The studies document that crime tends to accompany, concentrate around, and be aggravated by adult-oriented uses. Examples of these criminal activities include an increase in crimes of narcotics distribution and use, prostitution and unlawful sexual activity, pandering, and violence against persons and property.

Sexual encounter establishments also present significant health and safety concerns with respect to communicable diseases, such as AIDS and other sexually transmitted diseases. A number of courts have held that combating the spread of AIDS and other sexually transmitted diseases is a significant

governmental interest. Further, provisions of Penal Code Section 313 et seq. authorize local governments to regulate matter that is harmful to minors, and California court cases have recognized that protection of minors from sexually explicit materials is a compelling government interest. In order to ensure the harmful effects on children and minors exposed to the effects of adult businesses are minimized, specifically sexual encounter establishments, the City should enact regulations that will eliminate such exposure. Further, in order to prevent deterioration and degradation of the community before the problem exists, the City should revise its regulations regarding sexual encounter establishments now instead of waiting for the problems to be created in order to protect the community's health, safety, and welfare.

The studies enclosed with this report provide additional information about the deleterious effects associated with the sexual encounter establishments. The background studies are available for review in the City Clerk's office.

On December 10, 2009, the Planning Commission conducted a public hearing on the proposed Zoning Text Amendment and recommend the City Council approve the project, based upon findings contained in Section 1 of the proposed ordinance, by a vote of 7-0-0.

**FISCAL IMPACT:** N/A.

**ENVIRONMENTAL REVIEW:** The proposed amendment is exempt from the California Environmental Quality Act per Guideline 15061(b)(3), the general rule, which applies when the activity has no potential for causing a significant effect on the environment.

**Public Notice:** Public hearing notification is applicable. Because the proposed Zoning Text Amendment is applicable Citywide, a 1/8-page display ad public hearing notice was published in the *Tri-City Voice* on December 30, 2009.

**ENCLOSURES:**

- [Draft Ordinance](#)
- [Informational 1: Draft Planning Commission Minutes from December 10, 2009](#)
- Adult-Oriented Businesses supporting studies, 5 volumes, are available for review in the Office of the City Clerk

**RECOMMENDATION:**

1. Hold public hearing.
2. Find that the proposed Zoning Text Amendment is exempt from the California Environmental Quality Act per Guideline 15061(b)(3), the general rule, which applies when the activity has no potential for causing a significant effect on the environment.
3. Find that the Zoning Text Amendment is in conformance with the relevant provisions contained in the City's General Plan. These provisions include the goals and objectives set forth in the General Plan's Fundamental Goals and Local Economy Chapter as enumerated within the staff report.
4. Find the public necessity, convenience, and general welfare require the adoption of this Zoning Text Amendment because the use adult encounter center is not appropriate anywhere in the City, including the Central Business District, the cultural/civic center of the community, where all age groups, including families with children, congregate.
5. Waive full reading and introduce an ordinance adopting the proposed Zoning Text Amendment.

**5.1 PARTICIPATION IN THE CALIFORNIAFIRST PROGRAM OFFERED BY THE CALIFORNIA STATEWIDE COMMUNITIES DEVELOPMENT AUTHORITY Hold Public Hearing (Published Notice) and Adopt Resolution Authorizing City of Fremont Participation in the CaliforniaFIRST Program for Financing of Renewable Energy, Energy Efficiency, and Water Efficiency Projects**

**Contact Person:**

Name:	Dan Schoenholz	Don Dorman
Title:	Policy and Special Projects Manager	Revenue & Treasury Manager
Dept.:	Community Development	Finance
Phone:	510-494-4438	510-494-4616
E-Mail:	dschoenholz@fremont.gov	ddorman@fremont.gov

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**Executive Summary:** The City Council is asked to hold a public hearing and adopt a resolution approving the City of Fremont's participation in the CaliforniaFIRST Program offered by the California Statewide Communities Development Authority (CSCDA or California Communities). CSCDA is a California joint powers authority (JPA), of which the City is already a member. The CaliforniaFIRST program creates a mechanism for property owners to finance renewable energy, energy efficiency, and water efficiency projects. If the City's participation in CaliforniaFIRST is approved by the City Council, property owner participation will be voluntary. CaliforniaFIRST imposes no substantial financial or administrative burdens on the City, but it expands financing alternatives for both residential and commercial property owners, and by encouraging energy and water efficiency, will help the community reduce its environmental footprint.

**BACKGROUND:** CSCDA is a joint powers authority sponsored by the League of California Cities and the California State Association of Counties. The member agencies of CSCDA include approximately 356 cities including the City of Fremont, and all 58 counties throughout California. The CaliforniaFIRST Program is being instituted by CSCDA to facilitate financing of renewable energy, energy efficiency and water efficiency improvements by property owners in participating cities and counties. If a property owner chooses to participate, the improvements to the property will be financed by the issuance of bonds by California Communities. California Communities will levy "contractual assessments" on the owner's property to repay the portion of the bonds issued to finance the improvements on that property.

The "contractual assessment" proceedings will be undertaken by California Communities under the authority granted under Chapter 29 of Part 3 of Division 7 of the Streets and Highways Code, as amended in 2008 by Assembly Bill 811 and as further amended in 2009 by Assembly Bill 474, to allow the financing of renewable energy, energy efficiency and water efficiency improvements on private property. Pursuant to Streets and Highways Code Section 5898.12.(a), assessments may only be levied to finance these types of environmentally sound improvements with the "free and willing consent of the owner of each lot or parcel on which an assessment is levied at the time the assessment is levied." Property owners show their consent to the assessments, which become liens against their property, by executing a contract with California Communities that allows bonds to be sold to finance the improvements.



**DISCUSSION/ANALYSIS:** The benefits of participation to the property owner include the following:

- Only property owners who choose to participate in the program will have assessments imposed on their property.
- In today's economic environment, there may not be attractive private enterprise alternatives for property owners to finance renewable energy/energy efficiency/water efficiency improvements.
- Even if there were private enterprise alternatives, most private loans are due on sale of the benefited property, which makes it difficult for property owners to match the life of the repayment obligation with the useful life of the financed improvements. Under the CaliforniaFIRST Program, the assessment lien transfers with the property upon sale.
- The property owner can choose to pay off the assessments at any time, subject to applicable prepayment penalties.
- By virtue of regional aggregation provided by the CaliforniaFIRST Program, small projects, both residential and commercial, can have access to the municipal bond market, which may produce a lower borrowing cost.

The benefits to the City include the following:

- As in conventional assessment financing, the City is not obligated to repay the bonds issued by California Communities or to pay the assessments levied on the participating properties.
- California Communities handles all assessment administration, bond issuance and bond administration functions. A participating city can provide financing of renewable energy, energy efficiency and water efficiency improvements to property owners through the CaliforniaFIRST Program – thereby meeting its political and environmental goals – while committing virtually no staff time to administer the program.
- Quantifiable reductions in community energy and water usage and greenhouse gas emissions.
- Increased economic activity as property owners undertake improvements.

In order for the City to participate in CaliforniaFIRST, the City Council must adopt a resolution authorizing participation. The proposed resolution (1) authorizes California Communities to accept applications from owners of property within the City for municipal financing of renewable energy, energy efficiency and water efficiency improvements through the CaliforniaFIRST Program, (2) authorizes California Communities to conduct assessment proceedings and levy assessments against the property of participating owners within the City's boundaries, and (3) authorizes miscellaneous related actions and makes certain findings and determinations required by law. California Communities will undertake a judicial validation proceeding as part of its initiation of the CaliforniaFIRST Program.

The resolution also authorizes payment of a set-up fee to cover legal, procedural, and technology costs associated with the CaliforniaFIRST Program. That one time fee would total \$20,000 if not all Alameda County jurisdictions join CaliforniaFIRST. If all other Alameda County jurisdictions join CaliforniaFIRST, the City's fees will total \$15,625. It should also be noted that CSCDA, in collaboration with Sacramento County, is submitting a grant application to the California Energy Commission (which the Council is being asked to authorize in a separate agenda item) that would eliminate all set-up fees for the City if it is successful. Therefore, the \$20,000 set-up fee total that would

be authorized in the resolution should be viewed as the worst-case maximum cost for the City to participate in CaliforniaFIRST.

Any jurisdiction can withdraw from the CaliforniaFIRST Program at any time by passing a resolution rescinding the authorization.

**FISCAL IMPACT:** Participation in CaliforniaFIRST has a maximum direct one-time cost of \$20,000. If all Alameda County jurisdictions join, the cost of participation falls to \$15,625. If CSCDA's grant application is successful, the City's direct program costs will be fully paid. There will likely be some positive impact on City revenues since this financing option is intended to encourage property owners to purchase renewable energy or energy/water efficient equipment they might not otherwise purchase, thus generating new economic activity and possibly sales tax revenue.

**ENVIRONMENTAL REVIEW:** The Resolution is not a "project" as that term is defined in Title 14, California Code of Regulations, Section 15378. Therefore, no CEQA determination is required.

**ENCLOSURE:** [Proposed resolution authorizing the City of Fremont to join CaliforniaFIRST and to become a participating agency in this program, and granting certain administrative authorizations to CSCDA](#)

**RECOMMENDATION:**

1. Hold a public hearing.
2. Adopt a resolution authorizing the City of Fremont's participation in the CaliforniaFIRST program offered by the California Statewide Communities Development Authority (CSCDA).

## 5.2 AUTHORIZATION OF TWO GRANT APPLICATIONS FOR STATE ENERGY PROGRAM FUNDING

**Adopt Resolution Authorizing Sacramento County to Act as Lead Applicant for a Municipal Financing Program Grant (SEP 1) and Resolution Authorizing the Association of Bay Area Governments to Act as Lead Applicant for a California Comprehensive Residential Building Retrofit Grant (SEP 2)**

### **Contact Person:**

Name:	Dan Schoenholz	Jill Keimach
Title:	Policy and Special Projects Manager	Director
Dept.:	Community Development	Community Development
Phone:	510-494-4438	510-494-4627
E-Mail:	dschoenholz@fremont.gov	jkeimach@fremont.gov

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**Executive Summary:** The \$3.2 billion Energy Efficiency and Conservation Block Grant (EECBG) program created a number of funding streams for state and local energy efficiency efforts. The City previously received a formula block grant to fund a variety of energy projects. Applications are now being accepted under two additional EECBG-funded grant programs, the State Energy Program (SEP) and the Retrofit Ramp-Up (RRU). City staff has been working with neighboring cities, county agencies, and regional organizations to secure additional funds through these competitive solicitations. If some or all of the applications are successful, they could provide substantial energy conservation benefits to the community with a minimal investment of City funds and staff time.

This report summarizes the various applications. Staff recommends that Council adopt Resolutions authorizing other entities to act as Lead Applicants on behalf of the City for two separate SEP grant applications. No Council action is required for the City's participation in the Retrofit Ramp-Up (RRU) regional application.

**BACKGROUND:** The EECBG was funded as part of the American Reinvestment and Recovery Act (ARRA). Under EECBG, there are three different potential avenues for the City to receive funding:

**1. Direct Formula Block Grants:** Cities exceeding 35,000 in population were eligible for direct formula block grants. Council authorized staff, in June 2009, to submit an application for the City's \$1.89 million allocation, which will fund a variety of energy efficiency projects and programs, including the countywide "Green Packages" program to develop uniform standards for energy efficiency retrofits in buildings and to conduct outreach regarding retrofits. The Department of Energy (DOE) awarded these funds to the City in November 2009.

**2. Retrofit Ramp-Up:** The DOE is using \$390 million of the EECBG to fund the "Retrofit Ramp-Up" (RRU) program. The RRU program will fund innovative programs that promote whole-neighborhood energy efficiency building retrofits. ABAG is coordinating with the Sacramento, Los Angeles, and San Diego regions, the California Energy Commission (CEC), and the California Air Resources Board to submit a \$75 million grant application to test out innovative outreach channels and apply community-based social marketing to determine the most effective outreach approaches to be replicated nationwide. In the ABAG region, initial pilots would take place in Alameda County

(coordinated by the County Solid Waste Authority, StopWaste.Org), Sonoma County, and San Francisco. If the application is successful, StopWaste.org will receive \$3 million to initiate pilot neighborhood-focused energy efficiency projects for businesses and multi-family residential properties in several different locations around the County.

No Council action is required by the DOE to support the RRU application.

**3. State Energy Program (SEP):** The State of California has allocated \$95 million of its EECBG funds for the SEP, which will provide competitive grants to promote residential and commercial building energy efficiency (and water efficiency) retrofits. Specifically, the State intends to fund three types of programs:

- **Municipal Financing Program (SEP 1)**

This grant program will fund implementation of financing programs for energy efficiency improvements in residential and commercial buildings where building owners contractually agree to repay the financing through property tax assessments (often referred to as AB 811-style programs). The CEC has indicated that it will prioritize award of these grants to broad regional consortiums of local governments. Alameda County is participating in a joint grant application with 13 other California counties in six regions throughout the State, including the Bay Area, Capitol, Central Coast, Central Valley, Mid Coast, and Southern California regions. The County of Sacramento is the lead applicant. The grant amount requested will be approximately \$16.5 million, with approximately \$780,000 allocated for the County of Alameda. These funds will be administered by the County on behalf of all the cities in the county because no direct monies will pass to the cities.

The grant is intended to support the successful launch of the CaliforniaFIRST financing program; the Council is being asked to authorize City participation in CaliforniaFIRST in a separate agenda item this evening. The proposal consists of both statewide and countywide components. The statewide component provides a one-percent interest rate buy-down on the first \$25 million of projects in the CaliforniaFIRST pilot. It is hoped that a lower interest rate will make the program more attractive to property owners in the initial phases of the program. Additionally, the statewide component provides funding to offset the costs to all participating counties and cities for initial program set-up, including legal validation of financing districts and websites for property owners to file their applications. For Fremont, this would equate to a savings of up to \$20,000.

The countywide component will focus on increasing participation in the municipal financing program by providing enhanced customer service to residents and businesses in both cities and unincorporated communities. CaliforniaFIRST's customer service program will provide web-based tools for relatively sophisticated property owners to use to secure property-assessed financing. The property owner will need to assess their eligibility against underwriting criteria, arrange for an energy audit, obtain contractor bids, and present a completed project proposal. In order to maximize participation, the countywide component will fund enhanced outreach and customer service, including one-on-one consultations that would be available to those property owners who require more personalized assistance prior to enrolling in the program.

- **California Comprehensive Residential Building Retrofit Program (SEP 2)**

SEP 2 grant funding will be allocated for programs that support a tiered approach to home energy retrofits. Alameda County jurisdictions are participating with eight Bay Area counties in an Association of Bay Area Governments (ABAG) proposal under this grant. The ABAG proposal is requesting approximately \$10.7 million for the region. At the regional level, these funds will be used to provide key region-wide program elements, including developing retrofit standards, marketing and market analysis, training and workforce development, and quality assurance. The focus is the promotion of comprehensive whole-home retrofits. It is anticipated \$1.6 million will be received by StopWaste.Org on behalf of Alameda County jurisdictions that will be used to expand elements currently covered at a basic level by jurisdictional contributions to the Green Packages Program, including workforce and training provider program coordination, a single-family media campaign, and multifamily property outreach.

- **Municipal and Commercial Building Targeted Measure Retrofit Program (SEP 3)**

This program will fund public and/or private partnerships that will mass implement a few, targeted best practices measures in a large number of municipal and/or commercial buildings throughout California. Staff explored two possible partnerships seeking to implement large-scale upgrades to building lighting and HVAC equipment. However, staff determined that the City has already implemented many of the upgrades being proposed and did not pursue these opportunities further.

**DISCUSSION/ANALYSIS:** Participation in grant applications for the RRU and the SEP 1 and SEP 2 Programs will provide numerous benefits to the community if the grant applications are successful, including the following:

- Interest rate buy downs of 1% and enhanced customer service for participants in CaliforniaFIRST (SEP 1)
- Funding for set-up and validation costs related to the CaliforniaFIRST program (SEP 1)
- Enhanced local workforce training and marketing related to whole-house energy retrofits (SEP 2)
- Pilot programs for neighborhood-scale efficiency retrofits (RRU)

**FISCAL IMPACT:** Participation in the various grant applications requires no commitment of City funds. Because other entities will administer the grant funds, staff costs will be minimal. The SEP 1 grant could save the City up to \$20,000 (the maximum cost the City might otherwise incur to participate in CaliforniaFIRST). If some or all of the grants are received, there will likely be some positive impact on City revenues due to increased economic activity.

**ENVIRONMENTAL REVIEW:** Neither grant application is a “project” as that term is defined in Title 14, California Code of Regulations, Section 15378. Therefore, no CEQA determination is required.

**ENCLOSURES:**

- [Resolution Authorizing Sacramento County to Act as Lead Applicant for a Municipal Financing Program Grant on Behalf of the City of Fremont](#)
- [Resolution Authorizing the Association of Bay Area Governments to Act as Lead Applicant for a California Comprehensive Residential Building Retrofit Grant on Behalf of the City of Fremont](#)
- [American Resource and Recovery Act Funding Sources for Energy Efficiency](#)

**RECOMMENDATION:**

1. Adopt Resolution Authorizing Sacramento County to Act as Lead Applicant for a Municipal Financing Program Grant on Behalf of the City of Fremont.
2. Adopt Resolution Authorizing the Association of Bay Area Governments to Act as Lead Applicant for a California Comprehensive Residential Building Retrofit Grant on Behalf of the City of Fremont.

### 5.3 APPEAL OF DENIAL OF WANG FAMILY TENTATIVE PARCEL MAP (TPM #8265) – 46953 OCOTILLO COURT

#### Public Hearing (Published Notice) to Consider an Appeal of a Planning Commission Decision to Deny a Tentative Parcel Map Application (TPM 8265) to Subdivide a 1.02-acre Parcel into Two Single-Family Lots (PLN2009-00175)

##### Contact Person:

Name:	Steve Kowalski	Jeff Schwob
Title:	Associate Planner	Planning Director
Dept.:	Community Development	Community Development
Phone:	510-494-4532	510-494-4527
E-Mail:	skowalski@fremont.gov	jschwob@fremont.gov

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**Executive Summary:** The Planning Commission’s denial of a residential lot subdivision into two roughly ½ acre lots is being challenged by the applicants, Michael and Mingchen Hsu Wang. The primary issue raised by the appeal is whether the proposed subdivision complies with the General Plan, specifically Land Use Goal #1, which provides: “New housing development while conserving the character of the City’s existing single family neighborhoods.” The Planning Commission found that the lot split was not in keeping with the character of the neighborhood, in particular, the larger lots and spacious development pattern along Ocotillo Court. The Wangs contend that: (a) the Commission defined the relevant neighborhood too narrowly; (b) neighborhood character is defined by more than just lot size; and, (c) that in any event, the proposed lot split meets or exceeds all established zoning and specific General Plan standards for lot size.

**Background:** The existing house on the property was built with permits in 1982. In 2004, the Wangs submitted a tentative parcel map application nearly identical to the present application, but withdrew it in 2006 after another lot split application in the neighborhood (PLN2006-00043) was denied by the Planning Commission as being inconsistent with General Plan Land Use Goal #1 because the proposed subdivision would be inconsistent with the large lot character of the neighborhood. The City Council upheld that denial on a vote of 2-1 with two members absent. (see Informational Items #1 and #2 for the minutes from these two hearings).

**Project Description:** The applicant is proposing to subdivide the 1.02-acre parcel into two lots. The first lot (Parcel 1) would contain the existing house and measure 24,299 square feet ( $\pm 0.56$  acres), while the second lot (Parcel 2) would measure 20,371 square feet ( $\pm 0.47$  acres) and be developed with a new single-family home at a later date. The existing house and driveway location on Parcel 1 would remain unchanged, but the existing swimming pool in the rear yard of the property would be demolished to allow for the creation of the second lot. The new parcel would be oriented toward Yakima Drive.

There is an existing 10-foot wide storm drain easement running directly through the middle of Parcel 2 that would be abandoned and relocated so that the storm drain line does not run underneath the future home site. The rear half of the property is also encumbered by a large open space easement which no construction can encroach within unless its design is certified by a licensed geotechnical engineer. There are a number of small, fruit-bearing trees that would need to be removed from Parcel 2 to accommodate

the building envelope of the future home, and a tall hedgerow along the street that would be removed in order to provide vehicular access to the lot from Yakima Drive.

## **Project Analysis**

**General Plan Conformance Analysis:** The subject property is designated Low Density Residential 3-5 dwelling units per acre in the General Plan. The average density of the property when calculated using the current lot size is 1.0 dwelling unit per acre. The proposed subdivision would increase the average density to 2.0 units per acre, thereby bringing it closer to, but still slightly below the range prescribed by the General Plan. However, the slight reduction in average density below the level prescribed by the General Plan could be supported in this case because the proposed density is similar to that of the other properties on the same side of the street that back up against the Interstate 680 freeway and are constrained by steep slopes running across the backs of the lots.

The following General Plan Land Use and Housing objectives apply to the proposed project:

- **Land Use Goal 1** – *New housing development while conserving the character of the City's existing single-family residential neighborhoods*
- **Housing Goal 3, Implementation Program 10** – *Allow residential development at all points within the density range prescribed by the General Plan and encourage at least the midpoint of the permitted density range.*

### Analysis:

The subject parcel is located at the southwest corner of Yakima Drive and Ocotillo Court. All of the parcels located along the south side of Yakima Drive and on Ocotillo Court are designated Low Density Residential 3-5 units per acre in the General Plan. However, the majority of these lots were developed at an average density closer to 1.0 unit per acre due to their location on a ridge above Interstate 680 and the presence of steep slopes and open space easements running across many of their rear yards. The average density of 2.0 units per acre that would be created as a result of the proposed subdivision is still below the range prescribed by the General Plan, but closer to it than that of the majority of the lots along the south side of Yakima and along Ocotillo. As such, the proposed average density of all the lots would be more consistent with the General Plan land use designation than the existing density of the neighborhood, but still low enough to maintain the existing character of development throughout the larger neighborhood. From this perspective, the proposal could be viewed as consistent with both of the above-referenced goals contained in the General Plan.

By contrast, the City denied PLN2006-00043, which proposed to subdivide the 1.0-acre property directly across Ocotillo Court from the subject property into two single-family lots. The Planning Commission's denial, upheld by the City Council, found that the proposed subdivision was inconsistent with General Plan Land Use Goal #1. Specifically, the Commission found, that allowing the creation of an additional lot would adversely impact the existing character of the neighborhood by allowing development of new homes on lots smaller than one acre and would introduce another home to the street. Similarly, in reviewing the Wangs' application, the Commission found proposal was not consistent with the existing 1.0-acre-or-more average lot size in the neighborhood comprising Ocotillo



Court. In doing so, the Commission defined the “existing neighborhood” as the 10 parcels that comprise Ocotillo Court.

Staff has provided a photographic montage of Ocotillo Court and its immediate surroundings (portions of Yakima Drive, Zapotec Drive and Joshua Place) which depicts the different character of the properties on the cul-de-sac compared to those on the surrounding streets. Many of the properties along Ocotillo Court have long, gated driveways, heavily wooded front yards, and homes that are set back deep within the lots and which have very large yards surrounding them (see Informational Item #6). These characteristics create a residential setting distinct from other nearby streets.

***Zoning Ordinance Compliance:*** Under FMC Section 8-1418, the decision-making body must make the findings below in order to approve a Tentative Parcel Map:

- (a) The map meets or performs all of the requirements or conditions imposed by the Subdivision Map Act and Chapter 1 of the Zoning Code (Subdivisions);
- (b) The proposed subdivision, together with the provisions for its design and improvements, is consistent with applicable general and specific plans;
- (c) The site is physically suitable for the type or proposed density of development;
- (d) The design of the subdivision or the proposed improvements is not likely to cause substantial environmental damage or substantially and avoidably injure fish or wildlife or their habitat;
- (e) The design of the subdivision or the type or improvements is not likely to cause serious public health problems; and
- (f) The design of the subdivision or the type of improvements will not conflict with easements, acquired by the public at large, for access through or use of property within the proposed subdivision.

***Discussion:***

- (a) The proposed tentative parcel map does satisfy the procedural requirements and conditions of the Subdivision Map Act and Subdivisions Chapter of the Zoning Code in that it would comply with all applicable subdivision development standards and preserve and/or replace all existing easements affecting the adjoining properties. In addition, it is capable of being supported by all existing municipal services and infrastructure, including domestic water and sewer services.
- (b) All of the parcels located along the southern side of Yakima Drive and along Ocotillo Court as the subject property are currently designated Low Density Residential 3-5 units per acre in the General Plan. However, the majority of these lots are developed at an average density closer to 1.0 unit per acre because most of them back up to the Interstate 680 freeway and have steep slopes and/or large open space easements running across their rear yards. The average density of 2.0 units per acre that would be created as a result of the proposed subdivision is still below the range prescribed by the General Plan, but it is closer than the majority of the neighboring parcels on the same side of the street. As such, if the lot is ultimately developed with a new home, the resulting average density would be more consistent with the General Plan than the average density of many of the neighboring properties. At the same time, however, the average density would still be low enough to maintain the existing character of development along the street in accordance with the General Plan policy to allow for new single-family residential development while preserving the existing character of the neighborhood, because it would more closely resemble the existing, slightly higher density found throughout the remainder of the neighborhood.

- (c) The site is physically suitable for the proposed end use as two single-family lots because both lots would be large enough to accommodate a detached single-family dwelling with standard-sized setbacks and ample useable private yard space. The following tables depict how each lot would comply with the standard R-1-10(H-I) lot requirements of the Zoning Ordinance if the subdivision were approved:

<b>Parcel 1 (w/ existing house facing Ocotillo Court)</b>		
<b>Lot Feature</b>	<b>R-1-10(H-I) Standard</b>	<b>Proposed</b>
Lot area	10,000 sq. ft. minimum	24,299 sq. ft.
Lot width	80 feet minimum	145 feet (avg.)
Lot depth	100 feet minimum	115 feet (avg.)
Lot frontage	35 feet minimum	110 feet

<b>Parcel 2 (new lot facing Yakima Drive)</b>		
<b>Lot Feature</b>	<b>R-1-10(H-I) Standard</b>	<b>Proposed</b>
Lot area	10,000 sq. ft. minimum	20,371 sq. ft.
Lot width	80 feet minimum	91 feet (avg.)
Lot depth	100 feet minimum	216 feet (avg.)
Lot frontage	35 feet minimum	37 feet

As can be seen from the tables above, both lots would meet or exceed all R-1-10(H-I) minimum lot standards, and no variances or exceptions would be needed. In addition, neither lot would have slopes in excess of 6%, so neither one would need to have its lot area or width increased due to excessive sloping. Each lot would also have ample open space to accommodate the required front, rear and side yard setbacks of the R-1-10(H-I) zone. If the developer were to propose a two-story home on Parcel 2, then the house plans would have to comply with the City's two-story home design guidelines which address such features as mass, scale, and neighborhood compatibility.

- (d) The design of the subdivision would not cause substantial environmental damage or significantly impact fish or wildlife resources in that the existing house would not be altered and the area where the new house would be built is relatively flat and largely cleared of its natural vegetation. As such, the property does not contain significant biological resource habitat, and there are no water bodies located on the site. In addition, the applicant would only be able to encroach within the existing open space easement running across the rear of the property if a licensed geotechnical engineer determines that the area can be safely developed.
- (e) The design of the subdivision or the type or improvements would not likely cause serious public health problems in that a geotechnical report has been prepared and peer-reviewed which recommends specific construction techniques to ensure the safety of the occupants of the new home and the adjacent properties, and the developer would be required to install new public improvements for Parcel 2 in accordance with the current City standards in effect at the time a building permit is approved for the lot. In addition, the proposal would not impact the safety or physical condition of the surrounding properties in that the applicant would be required to satisfy conditions of approval that will ensure the subdivision and any future development on Parcel 2 complies with all applicable building, sanitation, and engineering/grading codes and standards.
- (f) If approved, the proposed subdivision would not interfere with any existing public easements affecting the subject property. There is an existing public storm drainage easement traversing the middle of Parcel 2 that would be re-routed in order to provide room for a future building envelope

on the lot, and the existing open space easement running across the back of the property would be preserved in its current location and kept free from any new structural encroachments unless a licensed geotechnical engineer determines that a structure can be built within it safely.

***Street Right-of-way Dedication and Improvements:***

No additional right-of-way would need to be dedicated by the applicant if the proposed subdivision is approved. All public street and right-of-way improvements along Yakima Drive and Ocotillo Court were completed during the development of Tract 3723 and need not be repaired or replaced.

***Easements:***

Creation of a building envelope on Parcel 2 would require the relocation of the existing 10-foot wide public storm drainage easement. A portion of the existing easement would have to be vacated, a new easement would have to be granted, and the existing 15-inch pipe traversing the site would have to be relocated as a condition of approval of the final parcel map.

***Applicable Fees:***

The new lot that would be created (Parcel 2) would be subject to Citywide Development Impact Fees when it is proposed for development with a new single-family home. These impact fees include fees for park facilities, park-land in-lieu, capital facilities, and traffic facilities. Since Parcel 1 is already developed with a single-family dwelling that will be preserved, the applicant would not be required to pay fees for that property. All applicable fees for Parcel 2 would be calculated and paid by the developer at the fee rates in effect at the time of building permit issuance.

***Planning Commission Action:*** Given the denial of PLN2006-00043, staff recommended to the Planning Commission that it review the proposed tentative parcel map on its merits and decide for itself whether to approve or deny the project. At the hearing on November 12, 2009, one neighbor voiced her support for the proposal while four neighbors voiced their opposition. Ultimately, the Commission voted 4-1 (with one Commissioner absent and one abstaining due to a conflict of interest) to deny the application as inconsistent with General Plan Land Use Goal 1. Specifically, the Commission found that the application was not consistent with the existing large-lot character of the neighborhood comprising Ocotillo Court. In so finding, the Commission effectively defined the relevant neighborhood as the ten parcels that comprise Ocotillo Court, parcels which share a unique quality and character as depicted in Informational Item #6. The specific findings that the Commission made were as follows:

- (a) The proposed subdivision is not consistent with the General Plan in that it would result in the development of homes on smaller lots and intensify development of the neighborhood, thus making it inconsistent with General Plan Land Use Goal #1 to preserve the existing character of the City's single-family neighborhoods; and
- (b) The site is not physically suitable for the type or proposed density of development in that the subdivision is not consistent with, and does not uphold, the largely intact, unique character of the existing neighborhood of Ocotillo Court which consists of lots averaging over one (1) acre in size because it would result in the creation of two new lots that are only roughly half an acre each.

***Appeal:*** The Wangs timely filed this appeal on November 23, 2009, and are requesting that the City Council reverse the Planning Commission's decision and approve the application. In their appeal, the appellants argue that the neighborhood as defined by the Commission should not be limited merely to

the properties on Ocotillo Court, and that if the definition is expanded to include the other properties along Yakima Drive, Zapotec Drive and Joshua Place, where many of the opposing parties actually reside, then the average lot size decreases significantly and, in turn, their proposal becomes much more consistent with the other lot sizes in the neighborhood.

Michael Wang drafted a letter explaining the specific grounds for his appeal (see Informational Item #4). He argues that the term “neighborhood” was too narrowly construed since it only included the 10 lots located on Ocotillo Court. In the applicant’s opinion, the 47 lots that comprise the original subdivision tract would make for a more reasonable definition of the neighborhood, especially since the City’s leaders have directed staff to use a much larger hearing notice mailing radius than the typical 300-foot radius for applications in this particular neighborhood, and because many of the opponents of the application reside on other streets within the tract, not just Ocotillo Court. The lot sizes of the 10 parcels on Ocotillo Court are considerably larger than the vast majority of the other parcels in the original tract, and for this reason the applicant feels that the Commission’s finding that the project is inconsistent with the existing character of the neighborhood is inaccurate and unfairly biased.

He also argues that the term “character of a neighborhood” cannot be defined by lot size alone, and that significantly more elements such as architecture, geography, and scenery make up the true character of a neighborhood. Furthermore, he states that the Commission failed to focus solely on the application at hand; that it used hypothetical arguments about the potential for future subdivisions of other lots in the neighborhood to guide its decision. And finally, he concludes that the Commission erred when it used a general policy about neighborhood preservation to trump a more specific General Plan land use designation. In his opinion, the more specific General Plan land use designation cannot be trumped by a broad land use policy in cases where the proposal is consistent with the designation and underlying zoning, as it is in this case.

If the Council decides to grant the appeal, then it should approve Exhibit “B” (findings and conditions in support) in support of the application and a recommendation for approval. If it elects to uphold the Planning Commission’s decision, then it should cite the Commission’s findings (adopt Exhibit “C”) or make new findings in support of a denial vote.

***Environmental Review:*** The project is exempt from the California Environmental Quality Act pursuant to Guideline 15315 (Minor Land Divisions).

***Public Notice and Comment:*** Public hearing notification is required for all appeals of decisions made by the Planning Commission. A total of 48 notices were mailed to the owners and occupants of all the properties located along Yakima Drive, Ocotillo Court, and Joshua Place south of Zapotec Drive, as well as a small number of properties along Zapotec Drive, itself. These notices were mailed out by the City Clerk’s Office on Wednesday, December 30, 2010. A Public Hearing Notice was also published in *The Tri-City Voice* on this same date.

**ENCLOSURES:*****Exhibits:***

- [“A” - Tentative Parcel Map 8265](#)
- [“B” - Findings and Conditions of Approval](#)

***Informational Items:***

- [1. Minutes from February 7, 2006 City Council hearing](#)
- [2. Minutes from December 8, 2005 Planning Commission hearing](#)
- [3. Minutes from November 12, 2009 Planning Commission hearing](#)
- [4. Letter of Appeal filed by Applicant on November 23, 2009](#)
- [5. Informational Enclosure](#)
- [6. Photographic Montage of Ocotillo Court and Yakima Drive and Vantage Point Legend](#)

**RECOMMENDATION:**

1. Hold public hearing;
2. Find that the project is categorically exempt from the California Environmental Quality Act (CEQA) pursuant to Guideline 15315 which exempts minor land divisions of four (4) or fewer parcels;  
And either:
  - 3a. Find that Tentative Parcel Map 8265 is in conformance with the relevant provisions contained in the City's current General Plan. These provisions include the designations, goals, objectives and policies set forth in the General Plan's Land Use Chapter and Housing Element as enumerated within the staff report; and
  - 3b. Reverse the Planning Commission's decision and approve Tentative Parcel Map 8265 as shown in Exhibit “A” based on the findings and subject to the conditions contained in Exhibit “B”;
- Or
4. Direct staff to prepare findings for denial of the project and continue the hearing to a date certain.

## **6.1 Report Out from Closed Session of Any Final Action**

## **7.1 PURCHASE OF FLEET REPLACEMENT VEHICLES AND DELEGATION OF AUTHORITY TO THE CITY MANAGER TO APPROVE FLEET PURCHASES OVER \$100,000**

**Authorization for the City Manager or Designee to Purchase Fleet Replacement Vehicles from Frontier Ford in an Amount Not to Exceed \$353,811 and from Maita Chevrolet in an Amount Not to Exceed \$177,813 and Delegation of Authority to the City Manager or Designee to Execute Fleet Purchases from the Multi-Year Vehicle Bids**

### **Contact Person:**

Name:	Mark P. Collins	Frank Morgan
Title:	Fleet Maintenance Supervisor	Deputy Director of Maintenance Services
Dept.:	Transportation & Operations	Transportation & Operations
Phone:	510-979-5739	510-979-5701
E-Mail:	mcollins@fremont.gov	fmorgan@fremont.gov

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**Executive Summary:** In 2008, the City issued two Multi-Year Vehicle Purchase solicitations requesting prices for 31 different vehicle models. The invitations for bids resulted in the City Council approving seven vendors to provide the 31 models of vehicles based on the vendor that provided the lowest responsive and responsible bid for each vehicle model. As part of the FY 2009/10 budget, the Council appropriated \$1,510,000 from the City's Vehicle Replacement Fund (Fund 610) for the acquisition of replacement vehicles in accordance with the City's vehicle replacement program, in accordance with Administrative Regulation 4.2.

The City currently needs to replace 18 public safety vehicles (13 police patrol vehicles and five fire command vehicles), all of which can be purchased from the Multi-Year Vehicle Bids. The Council-approved low bid for the purchase of Ford Crown Victoria police patrol vehicles is from Frontier Ford. The low bid for the purchase of Chevrolet Tahoe fire command vehicles is from Maita Chevrolet. Based on the approved bids, the 13 Crown Victorias will result in a purchase order with Frontier Ford in the amount of \$353,811. The five Chevrolet Tahoes will result in a purchase order with Maita Chevrolet in the amount of \$177,813. Because each of these purchase orders will exceed \$100,000, Council approval is required and staff is recommending the Council authorize staff to enter into these purchase orders.

For the remainder of FY 2009/10, staff is recommending that the Council delegate authority to the City Manager or designee to execute vehicle and equipment replacement purchases that are over \$100,000 so long as the purchase is from the Council-approved Multi-Year Vehicle Bids, is awarded to the Council-approved vendor using the low-bid price, and the total purchase amount is within the Council's budget appropriation for vehicle replacement.

**BACKGROUND:** The City's fleet is comprised of approximately 600 vehicles and pieces of equipment that include fire engines, police vehicles, general service vehicles, heavy equipment and generators. The City's Administrative Regulation 4.2: Vehicle Policy and Procedures (AR 4.2) establishes general requirements, procedures, and guidelines for vehicle use in order to provide efficient, cost effective delivery of services. As such, the Fleet Maintenance Supervisor monitors fleet operating costs, and recommends replacement of vehicles and equipment based on factors that include age, mileage, maintenance/repair records, functional use, and salvage value.

To facilitate the cost effective and operationally efficient purchase and replacement of vehicles, staff solicits multi-year vehicle bids requesting pricing for the routine replacement vehicle models that make up the majority of the City's fleet. Multiple vendors are solicited for each of the different types of vehicles required. The agreement for the vendor with the low bid for each type of vehicle is then brought to the City Council for approval. When it is time to replace a certain type of vehicle that is included in the multi-year bids, staff prepares a purchase order with the Council-approved vendor using the vendor's low-bid price. Any purchase order in excess of \$100,000 is brought to Council for approval in accordance with the City's current purchasing ordinance and regulations.

In 2008, the City issued two Multi-Year Vehicle Purchase solicitations requesting prices for 31 different vehicle models. The invitations for bids resulted in seven vendors being selected to provide the 31 models of vehicles based on the vendor that provided the lowest responsive and responsible bid for each vehicle model. The selected vendors were Fremont Toyota, Frontier Ford, Serramonte Ford, Hansel Ford, Albany Ford, Hoblit Motors, and Maita Chevrolet. The bid terms include fixed pricing and product availability for a period of two years, with an option to extend for a third and fourth year.

**DISCUSSION/ANALYSIS:** In FY 2009/10, the City Council appropriated \$1,510,000 from the Vehicle Replacement Fund (Fund 610) based on the City's vehicle replacement requirements in accordance with AR 4.2. There are currently 43 vehicles and pieces of equipment anticipated for replacement in FY 2009/10; most of which will be purchased from the two competitive Multi-Year Vehicle Bids #09-012 and #09-027, which were approved by the City Council in September 2008 and November 2008, respectively. It is now time for the City to replace 18 public safety vehicles (13 police patrol vehicles and five fire command vehicles), all of which can be purchased from the Multi-Year Vehicle Bids.

The Council-approved low bid for the purchase of Ford Crown Victoria police patrol vehicles is from Frontier Ford. The low bid for the purchase of Chevrolet Tahoe fire command vehicles is from Maita Chevrolet. Based on the approved bids, the 13 Crown Victorias will result in a purchase order with Frontier Ford in the amount of \$353,811. The five Chevrolet Tahoes will result in a purchase order with Maita Chevrolet in the amount of \$177,813. Because each of these purchase orders will exceed \$100,000, Council approval is required and staff is recommending the Council authorize staff to enter into these purchase orders.

Recognizing that the Council has previously approved the annual appropriation for replacement vehicles, has approved the vendors to be used for each category of replacement vehicle, and has approved the bid price for each vendor, staff is recommending that the Council authorize the City Manager or designee to execute future purchase orders over \$100,000 for the remaining replacement vehicles and equipment for the remainder of FY 2009/10. This authority would be strictly limited to replacement vehicles and equipment purchased from the Council-approved vehicle bids and vendors, and the total purchase amount is within the Council's budget appropriation for vehicle replacement. Such an authorization will improve the efficiency and reduce the lead time required to receive routine replacement vehicles. Fleet replacements greater than \$100,000 that are not included in the Council-approved multi-year replacement vehicle bids will continue to be brought to the City Council for approval.



**FISCAL IMPACT:** Vehicle replacement funds are collected through annual charges to each City department based on the specific number and type of vehicles in each department and the City's adopted replacement program. The funds are collected in the Vehicle Replacement Fund (Fund 610) and then appropriated by the City Council on an annual basis based on the vehicle replacement needs in the coming fiscal year. In FY 2009/10, \$1,510,000 was appropriated from the Vehicle Replacement Fund for the replacement of City vehicles and equipment. There is sufficient funding in the current vehicle replacement appropriation for the two recommended purchase orders.

**ENVIRONMENTAL REVIEW:** N/A

**ENCLOSURE:** None.

**RECOMMENDATION:**

1. Authorize the City Manager or designee to execute a purchase order with Frontier Ford in an amount not to exceed \$353,811 for the purchase of 13 Crown Victoria police patrol replacement vehicles.
2. Authorize the City Manager or designee to execute a purchase order with Maita Chevrolet in an amount not to exceed \$177,813 for the purchase of five Chevrolet Tahoe fire command replacement vehicles.
3. Delegate authority to the City Manager or designee to execute purchase orders for replacement vehicle and equipment that are over \$100,000 during the 2009/10 fiscal year, so long as the purchases are from the Council-approved Multi-Year Vehicle Bids using the approved vendors and low-bid prices, and are within the FY 2009/10 vehicle replacement appropriation.

**7.2 GRIMMER BOULEVARD GREENBELT GATEWAY PHASE 1 CONTRACT AWARD**  
**Approval of Plans and Specifications and Award of Contract in the Amount of**  
**\$992,699.68 to the Lowest Responsible Bidder for the Grimmer Greenbelt Gateway**  
**Phase 1 (Paseo Padre Parkway Intersection Improvements) Project, City Project No.**  
**8679A (PWC)**

**Contact Person:**

Name:	Paul Leung	Norm Hughes
Title:	Associate Civil Engineer	City Engineer
Dept.:	Community Development	Community Development
Phone:	510-494-4512	510-494-4748
E-Mail:	pleung@fremont.gov	nhughes@fremont.gov

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**Executive Summary:** The purpose of this report is to recommend that the City Council approve the plans and specifications for the Grimmer Boulevard Greenbelt Gateway Phase 1 (Paseo Padre Parkway Intersection Improvements) Project, City Project No. 8679A (PWC), waive a minor bid irregularity, accept the bid and award the contract for construction to C. F. Archibald Paving, Inc. in the amount of \$992,699.68. Staff also recommends the appropriation of \$850,000 in unused Traffic Impact Fee funds from the Washington Boulevard / Paseo Padre Parkway Grade Separation Project, City Project No. 8156 (PWC).

**BACKGROUND:** As part of the Irvington Concept Plan, adopted in April 2004, the Redevelopment Agency identified the Grimmer Boulevard Greenbelt Gateway Project from Fremont Boulevard to Central Park as one of the long-term projects for plan implementation. In June 2007, the City Council approved the Grimmer Boulevard Greenbelt Gateway Project as part of the 2007/08 – 2011/12 Capital Improvement Program. The centerpiece of the project is a 10-foot-wide pedestrian and bicycle path meandering through a landscaped greenbelt along a regraded creek bank on the west side of Grimmer Boulevard. The median on Paseo Padre Parkway will be reconfigured to provide a left turn pocket, and the traffic signal at the intersection will be modified to accommodate the Water Park entrance. The project will also construct a bridge across the flood control channel east of Paseo Padre Parkway to accommodate the realigned Water Park driveway entrance directly across from Grimmer Boulevard. Finally, when traffic volume warrants and funding is available, Grimmer Boulevard between Fremont Boulevard and Paseo Padre Parkway will be widened from two lanes to four lanes with a 12-foot-wide landscaped median and bike lanes on both sides. Due to the complexity of the project as it relates to working with the County, PG&E and resource agencies on the creek work, and the need to accelerate elements of the work, the project was split into several phases for construction. Staff continues to work with Alameda County on Phase II preliminary design of the pathway and integral creek enhancements.

**Project Description** – The first phase of the project is to open up the intersection on Paseo Padre Parkway at Grimmer Boulevard to provide better traffic circulation at the intersection and better vehicular and pedestrian access to the Water Park. Construction will include median and signal modification on Paseo Padre Parkway and the widening of Grimmer Boulevard at the intersection. The project will also include landscaping of the Paseo Padre Parkway medians. Construction is expected to be complete before the opening of the Water Park 2010 season.

This phase of the project was initially planned for next fiscal year and was to be funded from Redevelopment Agency funds. After operation of the Water Park for one season, it became apparent that improvement to the Grimmer Boulevard / Paseo Padre Parkway intersection prior to the upcoming season would be beneficial. Therefore, alternate funding for a portion of the intersection project is needed to move it forward now. This intersection is eligible to receive Traffic Impact Fees (TIF) and there are sufficient unencumbered TIF funds remaining in the Washington Boulevard / Paseo Padre Parkway Grade Separation project to fund the required \$850,000 appropriation. These TIF funds are available as a result of unused contingencies on the grade separation project. However, these TIF funds ultimately will be needed for other TIF-eligible transportation projects and are being provided as an advance to allow early funding and completion of the Grimmer Boulevard/Paseo Padre Parkway intersection, with the understanding that the City may still seek ultimate redevelopment funding to reimburse the TIF for this advance, as initially planned and subject to compliance with all City and Redevelopment Agency requirements for such ultimate redevelopment funding in accordance with the California Community Redevelopment Law.

The signal equipment at this intersection is outdated and needs to be upgraded with new equipment that meets current standards and is more energy efficient. All existing poles, vehicle and pedestrian signal heads, pedestrian push buttons, conduits and the traffic signal controller cabinet will be replaced. In order to reduce the potential for signal pole knockdowns, the existing signal poles mounted in the median will be removed and replaced with new signal standards with longer mastarms that will be placed behind the curb.

To increase the visibility of the signal heads, all new 12-inch signal heads will be installed. The signal modification will also include the installation of Accessible Pedestrian Signals (APS), countdown pedestrian indications and the installation of energy saving Light Emitting Diode (LED) light sources for all vehicle and pedestrian signal heads. The signal modification will also be constructed to accommodate the driveway into the Water Park. The existing crosswalk on the east side of the intersection across Paseo Padre Parkway will be relocated to the west side of the intersection so that it will be a direct connection to the future Grimmer Boulevard Greenbelt pedestrian path that will be constructed on the west side of Grimmer Boulevard.

On Paseo Padre Parkway, the median on the eastern side will be removed and the medians on the western side will be connected from Baylis Street to Grimmer Boulevard, widened (width ranging from 16' to 28') and landscaped. This will eliminate the current median opening at Rockett Drive. Vehicular access from Rockett Drive to northbound Paseo Padre Parkway can be made by making a U-turn at the signalized Grimmer Boulevard intersection. The un-signalized pedestrian crosswalk at Rockett Drive will be eliminated. New ADA compliant curb ramps at the intersections of Paseo Padre Parkway and Rockett Drive, and Paseo Padre Parkway and Grimmer Boulevard will be constructed, and bike lanes on Paseo Padre Parkway will be installed. The proposed construction will improve the traffic circulation at the intersection of Paseo Padre Parkway and Grimmer Boulevard and accommodate improved access to the Water Park and the streetscape on Grimmer Boulevard.

#### **DISCUSSION/ANALYSIS:**

**Bid Results:** The project was advertised and bids were opened on December 23, 2009. The bidders with their respective bid amounts are as follows:

<b><u>BIDDER</u></b>	<b><u>TOTAL BID</u></b>	<b><u>RANK</u></b>
C. F. Archibald Paving	\$992,699.68*	1*
Gallagher & Burk	\$1,018,419.00	2
Top Grade Construction	\$1,038,359.25	3
RGW Construction	\$1,066,333.00	4*
Wattis Construction	\$1,075,509.05	5
O'Grady Paving	\$1,081,410.90	6
Joseph J. Albanese	\$1,111,353.55	7
Bay Cities Paving	\$1,120,573.30*	8
Interstate Grading & Paving	\$1,124,193.90	9
Granite Construction	\$1,144,212.87	10
J.A. Gonsalves & Son	\$1,149,695.85	11
Fanfa Inc.	\$1,158,218.20	12
McGuire & Hester	\$1,167,925.00	13
Guerra Const. Group	\$1,173,761.94*	14
Granite Rock dba Pavex	\$1,188,867.50*	15
Engineer's Estimate	\$1,425,000	

\* Mathematically corrected

The low monetary bidder, C. F. Archibald Paving, Inc., submitted a responsive bid, is experienced in this type of project and is a responsible contractor.

C. F. Archibald Paving's bid does, however, contain a minor irregularity: Page 8 of 16 of the bid was not signed by the Contractor as required by the Instruction to Bidders of the Special Provisions. All other pages requiring signatures were signed. Generally, a bid must conform to all the requirements of the bid documents. However, a bid that does not strictly conform may be accepted if the deviation could not have affected the price of the bid or resulted in an advantage not allowed to other bidders. Here, the irregularity would not have affected the amount of the bid as it does not relate to items of work, nor does it result in an advantage to C. F. Archibald Paving not granted to other bidders. The California courts have held that the failure to sign a bid proposal is a waivable minor irregularity where the bidder has signed other bid documents. Here, the bidder executed the non-collusion affidavit, the statement of responsibility and the bid bond. In such circumstances the courts have determined that the bid is binding and that the bidder could not obtain relief by claiming mistake and withdrawing its bid. This is because the statute on mistake contemplates typographical and arithmetic errors and not the mistaken submission of a bid. The courts concluded that if the bidder is not able to obtain relief and withdraw its bid due to

mistake then the bidder does not have an unfair advantage over other bidders. Staff recommends that the City Council waive this item as a minor irregularity.

**FISCAL IMPACT:**

**Maintenance Impact:** The pruning and weed control of the proposed medians will be similar to the maintenance for the existing medians. The annual cost of maintenance for labor and materials for this project phase is within the existing operating budget.

**Project Cost and Funding:** The following is a summary of the estimated total project cost:

Engineering, Landscape & Traffic Signal Design & Administration	\$225,000.00
Construction Contract (Low Bid)	\$992,699.68
(Includes \$129,600 in construction contingency)	
Construction Inspection, Surveying and Administration (estimate)	\$150,000.00
Project Contingencies	<u>\$100,000.00</u>
<b>Total Estimated Cost:</b>	<b>\$1,467,699.68</b>

Proposed project funding is as follows:

<u>Source</u>	<u>Description</u>	
Fund 951	Redevelopment Funds	\$630,000.00
Fund 531	Traffic Impact Fees from 8156(PWC)*	<u>\$850,000.00</u>
	<b>Total Estimated Available Funding</b>	<b>\$1,480,000.00</b>

\* Staff recommends a transfer of \$850,000 in Traffic Impact Fees from Washington Boulevard / Paseo Padre Parkway 531PWC 8156 to Grimmer Green Belt Gateway 531PWC 8679.

**Environmental Analysis:** This project is categorically exempt under Section 15301 (c) of the Guidelines for the California Environmental Quality Act (CEQA) as a minor alteration of an existing facility. A Notice of Exemption/Statement of Exemption was filed with the County Clerk on December 14, 2009.

**ENCLOSURE:** [Landscape and Striping Schematic Design](#)

**RECOMMENDATION:**

1. Approve the Plans and Specifications for the Grimmer Boulevard Greenbelt Gateway Phase 1 (Paseo Padre Parkway Intersection Improvements) project, City Project No. 8679A (PWC).
2. Waive minor irregularity, accept the bid and award the construction contract for Grimmer Boulevard Greenbelt Gateway Phase 1 (Paseo Padre Parkway Intersection Improvements) project, City Project No. 8679A (PWC) to the lowest responsible bidder, C. F. Archibald Paving, Inc., in the amount of \$992,699.68 and authorize the City Manager or his designee to execute the contract.
3. Authorize the appropriation of \$850,000 from Washington Boulevard. /Paseo Padre Parkway Grade Separations, 531 PWC 8156, to Grimmer Boulevard Greenbelt Gateway 531 PWC 8679.

**8.1 Council Referrals – None.**

**8.2 Oral Reports on Meetings and Events**

## ACRONYMS

ABAG.....	Association of Bay Area Governments	FUSD .....	Fremont Unified School District
ACCMA.....	Alameda County Congestion Management Agency	GIS .....	Geographic Information System
ACE .....	Altamont Commuter Express	GPA.....	General Plan Amendment
ACFCD .....	Alameda County Flood Control District	HARB .....	Historical Architectural Review Board
ACTA .....	Alameda County Transportation Authority	HBA .....	Home Builders Association
ACTIA .....	Alameda County Transportation Improvement Authority	HRC .....	Human Relations Commission
ACWD .....	Alameda County Water District	ICMA .....	International City/County Management Association
BAAQMD .....	Bay Area Air Quality Management District	JPA .....	Joint Powers Authority
BART .....	Bay Area Rapid Transit District	LLMD .....	Lighting and Landscaping Maintenance District
BCDC .....	Bay Conservation & Development Commission	LOCC.....	League of California Cities
BMPs .....	Best Management Practices	LOS .....	Level of Service
BMR .....	Below Market Rate	MOU .....	Memorandum of Understanding
CALPERS.....	California Public Employees' Retirement System	MTC.....	Metropolitan Transportation Commission
CBD .....	Central Business District	NEPA .....	National Environmental Policy Act
CDD.....	Community Development Department	NLC.....	National League of Cities
CC & R's .....	Covenants, Conditions & Restrictions	NPDES.....	National Pollutant Discharge Elimination System
CDBG .....	Community Development Block Grant	NPO.....	Neighborhood Preservation Ordinance
CEQA .....	California Environmental Quality Act	PC.....	Planning Commission
CERT .....	Community Emergency Response Team	PD .....	Planned District
CIP .....	Capital Improvement Program	PUC.....	Public Utilities Commission
CMA .....	Congestion Management Agency	PVAW .....	Private Vehicle Accessway
CNG.....	Compressed Natural Gas	PWC.....	Public Works Contract
COF .....	City of Fremont	RDA .....	Redevelopment Agency
COPPS .....	Community Oriented Policing and Public Safety	RFP .....	Request for Proposals
CSAC.....	California State Association of Counties	RFQ.....	Request for Qualifications
CTC .....	California Transportation Commission	RHNA .....	Regional Housing Needs Allocation
dB .....	Decibel	ROP.....	Regional Occupational Program
DEIR.....	Draft Environmental Impact Report	RRIDRO.....	Residential Rent Increase Dispute Resolution Ordinance
DO .....	Development Organization	RWQCB .....	Regional Water Quality Control Board
DU/AC.....	Dwelling Units per Acre	SACNET .....	Southern Alameda County Narcotics Enforcement Task Force
EBRPD .....	East Bay Regional Park District	SPAA .....	Site Plan and Architectural Approval
EDAC .....	Economic Development Advisory Commission (City)	STIP .....	State Transportation Improvement Program
EIR.....	Environmental Impact Report (CEQA)	TCRDF.....	Tri-Cities Recycling and Disposal Facility
EIS .....	Environmental Impact Statement (NEPA)	T&O .....	Transportation and Operations Department
ERAF.....	Education Revenue Augmentation Fund	TOD .....	Transit Oriented Development
EVAW .....	Emergency Vehicle Accessway	TS/MRF .....	Transfer Station/Materials Recovery Facility
FAR .....	Floor Area Ratio	UBC .....	Uniform Building Code
FEMA.....	Federal Emergency Management Agency	USD.....	Union Sanitary District
FFD.....	Fremont Fire Department	VTa .....	Santa Clara Valley Transportation Authority
FMC.....	Fremont Municipal Code	WMA .....	Waste Management Authority
FPD.....	Fremont Police Department	ZTA.....	Zoning Text Amendment
FRC.....	Family Resource Center		

**UPCOMING MEETING AND CHANNEL 27  
BROADCAST SCHEDULE**

<b><i>Date</i></b>	<b><i>Time</i></b>	<b><i>Meeting Type</i></b>	<b><i>Location</i></b>	<b><i>Cable Channel 27</i></b>
January 19, 2010	6:00 p.m.	Work Session	Council Chambers	Live
January 26, 2010	7:00 p.m.	City Council Meeting	Council Chambers	Live
February 1, 2010	4:00 p.m.	Joint City Council/FUSD Board Meeting	Council Chambers	Live
February 2, 2010	7:00 p.m.	City Council Meeting	Council Chambers	Live
February 9, 2010	7:00 p.m.	City Council Meeting	Council Chambers	Live
February 16, 2010	TBD	Work Session	Council Chambers	Live
February 23, 2010	7:00 p.m.	City Council Meeting	Council Chambers	Live
March 2, 2010	7:00 p.m.	City Council Meeting	Council Chambers	Live
March 9, 2010	7:00 p.m.	City Council Meeting	Council Chambers	Live
March 16, 2010	TBD	Work Session	Council Chambers	Live
March 23, 2010	7:00 p.m.	City Council Meeting	Council Chambers	Live
March 30, 2010 (5 <sup>th</sup> Tuesday)		No City Council Meeting		
April 6, 2010	7:00 p.m.	City Council Meeting	Council Chambers	Live
April 13, 2010	7:00 p.m.	City Council Meeting	Council Chambers	Live
April 20, 2010	TBD	Work Session	Council Chambers	Live
April 27, 2010	7:00 p.m.	City Council Meeting	Council Chambers	Live
May 3, 2010	4:00 p.m.	Joint City Council/FUSD Board Meeting	Council Chambers	Live
May 4, 2010	7:00 p.m.	City Council Meeting	Council Chambers	Live
May 11, 2010	7:00 p.m.	City Council Meeting	Council Chambers	Live
May 18, 2010	TBD	Work Session	Council Chambers	Live
May 25, 2010	7:00 p.m.	City Council Meeting	Council Chambers	Live